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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: February 15th, 2016

+ W.P.(C) 314/2016

MOTI KUMARI

..... Petitioner

Through: Mr. N.K. Sahoo, Advocate.
versus

SECRETARY GENERAL,
SUPREME COURT OF INDIA

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE V.P.VAISH

VED PRAKASH VAISH, J. (ORAL)

1. By way of present petition the petitioner prays for appointment to the post of Junior Court Assistant in the Registry of the Supreme Court of India.
2. Succinctly stated the facts of the case are that the respondent invited applications for the post of Junior Court Assistant in the Registry of Supreme Court of India vide advertisement dated 31.10.2012. The eligible candidates were required to appear for the written test, typing test on computer followed by the interview before the Interview Board.
3. The petitioner along with other eligible candidates appeared for the written test held on 15th June, 2015. She was declared successful and was awarded 51 marks out of 100 marks. In the objective type computer

knowledge written test the petitioner secured 15 marks out of 25 marks. The respondent shortlisted 1175 candidates for appearing in interview. The petitioner along with other successful candidates appeared for interview and out of 1175 candidates 500 were declared successful. The petitioner's name did not figure in the list of 500 successful candidates. In the interview, the petitioner was awarded 6 marks out of 25 marks.

4. Mr. N.K. Sahoo, learned counsel for the petitioner contends that interview was not conducted in a fair manner as most of the candidates were awarded 13 marks irrespective of their performance in the written test. He further submits that the petitioner despite scoring 51 marks in the written test could not make it to the list of successful candidates whereas others who scored less marks than her made it to the final list.

5. I have heard learned counsel for the petitioner and perused the material on record.

6. There cannot be any doubt with respect to the position that an unsuccessful candidate in a selection process can challenge the selection process but only on limited grounds. In '**K.A. Nagamani vs. Indian Airlines and Others**', (2009) 5 SCC 515, the Hon'ble Supreme Court held that an unsuccessful candidate participated in a selection process without any demur or protest could not be permitted, later on, to question the process of selection.

7. In the case in hand, admittedly, the petitioner is an unsuccessful candidate in the selection process initiated as per the advertisement dated 31st October, 2012. The grievance of the petitioner is that in the case of

successful candidate excessive marks were awarded to them in interview whereas they scored less marks in the written test. According to the petitioner, maximum 25 marks can be awarded in the interview and the candidates who scored less marks in the written test compared to the petitioner were given about 12 or 13 marks in the interview whereas the petitioner was given only 6 marks. In fact, the selection process consisted of written test and practical test. The petitioner and other 1174 candidates cleared the written test, typing test and thereafter they were called for attending the interview.

8. So far as interview is concerned, this court without knowing what exactly are the questions put to the candidates who appeared before the Interview Board and in what manner they responded to those questions, this Court will not be in a position to state whether the other successful candidates were given escalated marks. The awarding of marks in interview would depend upon the performance of the candidates at the time of interview. The members of the Interview Board who judged the performance of the candidates awarded the marks to them and in the absence of any concrete material this court cannot interfere in the selection process. Unless and until a strong case capable of arriving at an irresistible conclusion that the selection process is vitiated is made out, this court cannot interfere with the awarding of marks in an interview conducted as part of a selection process. Merely because some of the successful candidates were awarded higher marks than that of the petitioner as mentioned above, it cannot be said that the awarding of marks at the interview was done with an intention to select certain persons. A selection made pursuant to an

advertisement by a department cannot be interfered by this court.

9. It is a settled principle of law that the scope of judicial review in the matter of appointments and selection is limited. The decision of the Selection Committee can be interfered on the limited grounds such as illegality or patent material irregularity in the constitution of the Selection Committee, the procedure adopted by the Selection Committee, vitiating the selection or the proved malafide affecting the selection process. The Court cannot sit in appeal over the decision of the Selection Committee.

10. In so far as the question as to whether this court can interfere in the process of awarding the marks in the oral interview and can re-assess the merits of the candidates, is concerned, the marks in the oral interview depend upon various factors such as the presentation by the candidate at the time of interview, his/ her personality, aptitude, knowledge and suitability to the post concerned. The members of the Interview Board, before whom the candidate had appeared, are the best judge to assist the aforementioned factors to award the marks in the interview. The mere fact that the petitioner has obtained more marks in the written test is no ground to find fault with the marks awarded to the other successful candidates in the interview.

11. The Hon'ble Supreme Court in '**Ashok Kumar Yadav and Ors. vs. State of Haryana and Ors.**', AIR 1987 SC 454, has laid down as under: -

“25.There cannot be any hard and fast rule regarding the precise weight to be given to the viva voce test as against the written examination. It must vary from service to service according to the requirement of the service, the minimum qualification prescribed, the age group from which the selection is to be made, the body to which the task of

holding the viva voce is proposed to be entrusted and a host of other factors. It is essentially a matter for determination by experts.....”

12. In another case in ‘**Dalpat Abasaheb Solunke, etc. etc. vs. Dr. B.S. Mahajan etc.**’, AIR 1990 SC 434, it was held as under: -

“9.It is needless to emphasise that it is not the function of the court to hear appeals over the decisions of the selection committees and to scrutinise the relative merits of the candidates. Whether the candidate is fit for a particular post or not has to be decided by the duly constituted selection committee which has the expertise on the subject. The court has no such expertise. The decision of the selection committee can be interfered with only on limited grounds, such as illegality or patent material irregularity in the constitution of the committee or its procedure vitiating the selection, or proved malafides affecting the selection etc.....”

13. Further, the Hon’ble Supreme Court of India in ‘**Madan Lal and Ors. vs. State of Jammu and Kashmir and Ors.**’, AIR 1995 SC 1088, it was observed as under: -

“9. Therefore, the result of 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 re-assess the relative merit of the concerned candidate 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 other 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.”

14. The Hon’ble Supreme Court in ‘**Durga Devi & Anr. vs. State H.P.**’, **AIR 1997 SC 2618**, has categorically laid down that the Tribunal by itself cannot scrutinise the comparative merits of the candidates for fitness for the post. It is the function of the Selection Committee.

15. It is now well settled that if a candidate takes a calculated chance and appears at the interview and the result of the interview is not palatable to him/her, in such an event, he/s he cannot turn around and subsequently contend that the process of interview was unfair or selection committee was not properly constituted.

16. In the instant case the petitioner has failed to show that there was any discrepancy in the selection process and the consequent result. The petitioner having participated and not succeeded has levelled number of allegations. These are, however, not supported by any concrete evidence. Also as no defect or irregularities have been pointed out with the said selection process, this Court would refrain from interfering in the same.

17. The award of marks in an interview in terms of performance of the candidates cannot be subject matter of judicial review, unless allegations are made against any member of the Interview Board, which are missing in the present petition. This court cannot sit in appeal over the marks awarded by

the Interview Board to the candidates in terms of their performance.

18. Thus, in the light of aforesaid discussion, I do not find any merit in the present petition. Accordingly, the petition is dismissed *in limine*.

(VED PRAKASH VAISH)
JUDGE

FEBRUARY 15, 2016
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