

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (S) No.4615 of 2014

1. Jivrakhan Lal Verma, S/o Shri Bhulau Ram Verma, aged about 33 years, R/o Shri Dudhadhari Math Mandir, Mathpara, Raipur, Police Station Purani Basti, District Raipur (C.G.)
2. Hemant Kumar Agrawal, S/o Shri Biharilal Agrawal, aged about 38 years, R/o Near Krishna Mandir, Imlibhatha, Ward No.23, Yatiyatan Lal Ward, Mahasamund, Police Station and District Mahasamund (C.G.)
3. Smt. Deepa Sunil, W/o Shri Sunil Joseph, aged about 42 years, R/o Quarter No.145, Vijeta Complex, New Rajendra Nagar, Police Station Saraswati Nagar, District Raipur (C.G.)
4. Prafulla Kumar Manjhi, S/o late Shri Gajpati Manjhi, aged about 33 years, posted as Data Entry Operator (Daily Wager), Chhattisgarh State Agriculture Marketing Board, Divisional Office, Raipur, Police Station Mowa, District Raipur (C.G.)
5. Ved Prakash, S/o Shri Leeluram, aged about 23 years, posted as Data Entry Operator (Daily Wager), Chhattisgarh State Agriculture Marketing Board, Seed Building, Telibandha, Raipur, Police Station Telibandha, District Raipur (C.G.)
6. Shailendra Kumar Dewangan, S/o Shri Gopal Singh Dewangan, aged about 27 years, R/o Village Faradhdi, Post Koba, Tahsil and Police Station Doundilohara, District Balod (C.G.)

---- Petitioners

Versus

1. State of Chhattisgarh, through the Principal Secretary, Agriculture Department, Mahanadi Bhawan, Mantralaya, New Raipur (C.G.)
2. Chhattisgarh State Agriculture Marketing Board, Raipur, through the Managing Director, Seed Bhawan, G.E. Road, Telibandha, Raipur (C.G.)
3. Mohd. Shahid, S/o Abdul Nabi, R/o Paragaon Road, Near Naya Talab, Gariyaband, District Gariyaband (C.G.)
4. Bhanupratap Patel, S/o Mannu Lal Patel, R/o Village Karga, Post Hasda No.2, Tahsil Kurud, District Dhamtari (C.G.)
5. Suraj Nishad, S/o Shri Paltan Nishad, R/o Near Manas Mandir, Gaya

Nagar Ward No.4, Street No.4, Durg, District Durg (C.G.)

6. Tokeshwar Dahariya, S/o Iwari Ram, R/o Village Nayak Bandha, Post Abhanpur, District Raipur (C.G.)
7. Shri Dushyant Kumar Neeshad, S/o Shri Januram Neeshad, R/o Village & Post Baronda, Tahsil Rajim, District Gariyaband (C.G.)
8. Shri Dilip Kumar Sahu, S/o Shri Pyare Lal Sahu, C/o Endonis Electric Pvt. Ltd. (Onida Customer Care), Hotel Guru Lane Bhamra House, Noorani Chowk, Raja Talab, Raipur, District Raipur (C.G.)
9. Sushri Rashmi Patel, D/o Shri Rameshwar Patel, D/46-47 Sector 1, Shankar Nagar, Raipur, District Raipur (C.G.)
10. Shri Shivprasad Diwan, S/o Late Shri Tamman Singh, R/o Village & Post Mohandi, Tahsil & District Mahasamund (C.G.)
11. Shri Doman Kumar Dhruw, S/o Shri Baliram Dhruw, R/o Village Boriajhar, Post Khatti, District Mahasamund (C.G.)
12. Shri Kaamdev, S/o Shri Chainuram, R/o Village Khaira, Post Koba, Police Station Daundilohara, Distt. Balod (C.G.)
13. Ku. Shweta Thakur, D/o Late Shri Thakur Singh Kaureti, R/o Near Laxmi Mobile Shop, Dhamtari Road, Pachpedi Naka, Raipur, District Raipur (C.G.)

---- Respondents

For Petitioners:	Mr. Prateek Sharma, Advocate.
For State/Respondent No.1:	Mr. Gary Mukhopadhyay, Deputy Govt. Adv.
For Respondent No.2:	Mr. Yashwant Singh Thakur, Advocate.
For Respondents No.3 to 13:	Mr. Amrito Das, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

06/02/2017

1. The petitioners, who are six in number, had filed this writ petition calling in question legality and validity of the advertisement dated 4-5-2013 and the merit list dated 22-8-2014 (Annexure P-1) and also the appointment of respondents No.3 to 13 on the post of Data Entry Operator.

2. The above-stated challenge has been made on the following factual background: --
3. The Chhattisgarh State Agriculture Marketing Board – respondent No.2 herein (for short 'the Board') issued an advertisement for recruitment and appointment on various posts including 12 posts of Data Entry Operator. Method of selection was clearly specified in the said advertisement. A category-wise list was to be prepared on the basis of merit based on the respective marks secured by the candidates on the strength of their minimum educational qualifications as prescribed under the Regulations and the advertisement. It further provides that amongst the candidates so placed in the merit list, candidates in the proportion being five times the number of posts advertised in the order of merit shall be called for proficiency test / interview. A merit list shall then be prepared on the basis of cumulative marks so obtained by the candidates in step (a) and step (b) from which the appointments shall be made in the order of merit. Certain benefits were also provided to the departmental candidates/contract appointees including age relaxation of five years, 5% additional marks if the appointment is for a period less than 3 years and 10% additional marks if the appointment is for a period more than 3 years. Last date for submission of application forms was 7-6-2013. The petitioners as well as the private respondents along with other candidates submitted their respective applications claiming candidature. List of eligible and ineligible candidates was prepared inviting objections up to 13-9-2013. List of eligible candidates was prepared after determination of the objections on

eligibility, who could be called for proficiency test. The petitioners as well as the private respondents were declared eligible and they appeared in the proficiency test. On 30-1-2014, a notice was published by the respondent No.2 Board on the website informing the candidates to appear in the proficiency test according to the dates notified on the website. From 10-2-2014 onwards for four days, proficiency test was conducted for the post of Data Entry Operator wherein the petitioners as well as the private respondents participated in the proficiency test without any demur and objection. Thereafter, on 28-7-2014, the petitioners preferred a representation before the Managing Director of the Board duly certifying their consent to the selection process and mentioning the fact that they have participated in the process and requested for grant of preference without any challenge to the selection process adopted by the Board and the advertisement. However, on 6-8-2014, for the first time, the petitioners also preferred a representation before the Minister of Agriculture questioning the selection process. On 22-8-2014, final merit list was prepared for appointment on the post of Data Entry Operator. On 11-3-2015, respondents No.3 to 13 were appointed.

4. The writ petition was filed challenging the advertisement and the merit list as well as by way of amendment, the appointment letters issued to respondents No.3 to 13 stating that the advertisement is contrary to the Chhattisgarh Rajya Krishi Vipanan Seva Viniyam, 1998, therefore, they are liable to be struck down being arbitrary and in violation of the applicable regulations.

5. Return has been filed by the Board stating inter alia that the petitioners had already participated in the proficiency test without any protest and demur and when the final selection list was prepared, thereafter, objections were made. Additional return has been filed by respondent No.2 stating inter alia that on 26-2-2007, it has been resolved that all the circulars and orders issued by the General Administration Department would be adopted by the Board and same would be applicable to the Board, and in accordance with the GAD circular dated 1-2-2013, the advertisement in question has been issued by the Board and as such, there is no illegality and therefore the writ petition deserves to be dismissed.
6. The private respondents have also made similar averments by filing their separate return.
7. Mr. Prateek Sharma, learned counsel appearing for the writ petitioners, would submit that the advertisement dated 4-5-2013 prescribing method of selection including eligibility criteria is contrary to what has been provided in the 1998 Regulations duly amended and incorporated on 26-5-2010. He would further submit that the rules/regulations will prevail over the advertisement issued and the rules will also prevail over the executive instructions, therefore, the impugned advertisement which is in conflict with the applicable regulations deserve to be struck down. He relied upon the judgments of the Supreme Court in the matters of **Malik Mazhar Sultan and another v. U.P. Public Service Commission and others**¹ and **State of Uttar Pradesh and others v.**

¹ (2006) 9 SCC 507

Babu Ram Upadhya².

8. Mr. Yashwant Singh Thakur, learned counsel appearing for the Marketing Board – respondent No.2, would submit that the advertisement issued by respondent No.2 is in accordance with the GAD circular dated 1-2-2013 and thereafter, the petitioners having participated in the proficiency test cannot be allowed to question the advertisement on the ground that it is in conflict with the Regulations of 1998. He placed heavy reliance upon the decision of the Supreme Court in the matter of **Dhananjay Malik and others v. State of Uttaranchal and others³**.

9. Mr. Amrito Das, learned counsel appearing for the private respondents, would vehemently submit that the petitioners having participated in the examination with open eyes and having failed to reserve a berth in the final selection cannot be allowed to turn around and question the criteria of selection and as such, the petition is only an outcome of an afterthought. He would further submit that preference would not mean an absolute en bloc preference akin to reservation or separate and distinct method of selection for them alone. A mere rule of preference meant to give weightage to the additional qualification cannot be enforced as a rule of reservation or rule of complete precedence. He would rely upon the judgments of the Supreme Court in the matters of **Secretary, A.P. Public Service Commission v. Y.V.V.R. Srinivasulu and others⁴**.

2 AIR 1961 SC 751

3 (2008) 4 SCC 171

4 (2003) 5 SCC 341

10. I have heard learned counsel for the parties and considered their rival submissions and also gone through the material available on record with utmost circumspection.
11. It is not in dispute that the advertisement was issued on 4-5-2013 by respondent No.2 prescribing method of selection and mode of selection. It is also not in dispute that pursuant to the advertisement, the petitioners had willingly participated in the said selection process held on 10-2-2014 in four days and thereafter, merit list was issued on 22-8-2014. It is only after the merit list was issued and the petitioners finding no place therein, they have filed this writ petition on 1-9-2014 challenging the advertisement as well as the merit list issued on certain grounds. In the meanwhile, they have made representations to the Managing Director of respondent No.2 as well as the Minister for Agriculture claiming certain preferences and for setting aside the selection process.
12. It is trite law that a candidate taking a calculated chance by appearing in the examination after knowing fully well the procedural norms and eligibility qualification and only because the result of examination is not palatable to him, cannot turn around and subsequently, question the method of selection/eligibility qualification. Their Lordships of the Supreme Court time and again in umpteen number of cases have laid down the law in this regard. Following judgments may be noticed usefully and profitably herein.

13. In the matter of **Madan Lal v. State of Jammu & Kashmir**⁵ in similar

5 (1995) 3 SCC 486

fact situation, Their Lordships of the Supreme Court have held that a candidate who consciously took part in the process of selection cannot turn around finding the decision unpalatable and question the method of selection. Paragraph 9 of the report states 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 turnround 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*⁶ 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."

14. Aforesaid judgment of the Supreme Court in **Madan Lal** (supra) has been followed with approval in **Dhananjay Malik** (supra), **Vijendra Kumar Verma v. Public Service Commission, Uttarakhand and others**⁷, **Ramesh Chandra Shah and others v. Anil Joshi and others**⁸, and **Madras Institute of Development Studies and another**

6 AIR 1986 SC 1043

7 (2011) 1 SCC 150

8 (2013) 11 SCC 309

v. Dr. K. Sivasubramanian and others⁹.

15. Therefore, the petitioners having appeared in the entire recruitment process initiated way back on 4-5-2013 consciously and willingly, cannot be allowed to question the eligibility qualification in a writ petition filed after 31-8-2014. They have taken a calculated chance to get a berth in the said recruitment but finding that they were not being successful, they decided to file writ petition questioning the eligibility qualification that it is not in accordance with the rules. The petitioners cannot be allowed to act in such a manner on the principle of law laid down by Their Lordships of the Supreme Court in **Madan Lal** (supra) reiterated in subsequent judgments.

16. Not only this, the petitioners' contention that the advertisement is in conflict with the rules also cannot be accepted on two grounds. Firstly – the respondent No.2 Board has filed additional return stating that all the regulations as applicable to the GAD are also applicable to the Board and therefore the advertisement has been issued in accordance with the GAD circular dated 1-2-2013 which has been filed along with additional return at page 68 of the paper book. No counter affidavit has been filed that the GAD has not made such circular and respondent No.2 has filed an affidavit clearly stating that on 26-2-2007 the Board has resolved to act in accordance with the GAD circular. Secondly – in **Dhananjay Malik** (supra), it has been clearly held in paragraphs 7 and 9 that once a candidate having participated in the selection process without any demur is estopped from complaining that the selection

process was not in accordance with the rules. It was further held that 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. Their Lordships have observed in paragraphs 7 and 9 as under: -

“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.

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.”

17. It is not in dispute, in the present case, that the petitioners have participated in the selection process including the proficiency test knowing fully well that the educational qualification and other method / mode of selection was clearly mentioned in the advertisement itself, and it is only when they could not secure any berth / seat on the post of Data Entry Operator, they decided to proceed / go ahead with the matter in the court of law and questioned it before this Court and thus, they have moved this writ petition. Therefore, the plea that the

advertisement is contrary to the rules, in view of the affidavit of respondent No.2 and in view of the decision rendered by the Supreme Court in **Dhananjay Malik** (supra) cannot be allowed to stand.

18. So far as the ground of preference raised by the petitioners is concerned, as mentioned in the advertisement itself, it is a clear case of the respondent Board that they have granted age relaxation of 5 years to the petitioners and also given 5% additional marks if the petitioners' appointment is for a period less than 3 years and 10% additional marks if their appointment is for a period more than three years. Thus, the petitioners have also availed the benefit of age relaxation as per the advertisement and also got additional marks while preparing their selection list and therefore they cannot be allowed to question the eligibility criteria / qualification.

19. The meaning of word "preference" has been no longer *res integra* and has been decided authoritatively by Their Lordships of the Supreme Court in **Y.V.V.R. Srinivasulu's** case (supra) and they have clearly held that when selection is made on the basis of merit assessed through competitive examination and interview, preference to additional qualification would mean other things being qualitatively and quantitatively equal, those having additional qualification would be preferred. Their Lordships further observed as under: -

"10. ... The word "preference" in our view is capable of different shades of meaning taking colour from the context, purpose and object of its use under the scheme of things envisaged. Hence, it is to be construed not in an isolated or detached manner, ascribing a meaning of universal import, for all contingencies capable of an invariable application. The procedure for selection in the

case involves a qualifying test, a written examination and an oral test or interview and the final list of selection has to be on the basis of the marks obtained in them. The suitability and all-round merit, if had to be adjudged in that manner only, what justification could there be for overriding all these merely because, a particular candidate is in possession of an additional qualification on the basis of which, a preference has also been envisaged. The Rules do not provide for separate classification of those candidates or apply different norms of selection for them. The “preference” envisaged in the Rules, in our view, under the scheme of things and contextually also cannot mean, an absolute en bloc preference akin to reservation or separate and distinct method of selection for them alone. A mere rule of preference meant to give weightage to the additional qualification cannot be enforced as a rule of reservation or rule of complete precedence. Such a construction would not only undermine the scheme of selection envisaged through Public Service Commission on the basis of merit performance but also would work great hardship and injustice to those who possess the required minimum educational qualification with which they are entitled to compete with those possessing additional qualification too, and demonstrate their superiority meritwise and their suitability for the post. It is not to be viewed as a preferential right conferred even for taking up their claims for consideration. On the other hand, the preference envisaged has to be given only when the claims of all candidates who are eligible are taken for consideration and when any one or more of them are found equally positioned, by using the additional qualification as a tilting factor, in their favour vis-a-vis others in the matter of actual selection.

11. Whenever, a selection is to be made on the basis of merit performance involving competition, and possession of any additional qualification or factor is also envisaged to accord preference, it cannot be for the purpose of putting them as a whole lot ahead of others, dehors their intrinsic worth or proven inter se merit and suitability, duly assessed by the competent authority. Preference, in the context of all such competitive scheme of selection would only mean that other things being qualitatively and quantitatively equal, those with the additional qualification have to be preferred. There is no question of eliminating all others preventing thereby even an effective and comparative consideration on merits, by according en bloc precedence in favour of those in possession of additional qualification irrespective of the respective merits and

demerits of all candidates to be considered. If it is to be viewed they way the High Court and Tribunal have chosen to, it would amount to first exhausting in the matter of selection all those, dehors their inter se merit performance, only those in possession of additional qualification and take only thereafter separately those with ordinary degree and who do not possess the additional qualification. Assuming for consideration without even accepting the same to be right or correct view to be taken, at least among the class or category of those possessing the additional qualification, inter se merit performance should be the decisive factor for actual selection for appointment and relief could not have been granted to the respondents for the mere asking only on the basis of the interpretation of the provision to someone who came to court, ignoring the fact that those before the court at any rate in spite of the view taken do not come up to the level of selection considered in the context of numerous others with higher ranks of merit performance, in addition to they being also in possession of the additional qualification, as those before the court. ...”

20.The principle of law laid down in **Y.V.V.R. Srinivasulu's** case (supra)

has been followed by the Supreme Court with approval in the matter of

G. Jayalal v. Union of India and others¹⁰.

21.Thus, “preference” only mean that additional advantage is to be given

and it does not mean to ignore the merit and automatic appointment

(see **Secy. (Health) Deptt. of Health & F.W. and another v. Dr.**

Anita Puri and others¹¹).

22.Similar is the proposition laid down in the matter of **Bibhudatta**

Mohanty v. Union of India and others¹², wherein Their Lordships of

the Supreme Court have held that where any rule or guideline provides

preference in respect of some higher qualification, it only means that all

other qualifications being equal, a person possessing higher

10 (2013) 7 SCC 150

11 (1996) 6 SCC 282

12 (2002) 4 SCC 16

qualification will be preferred. It cannot be considered as sole criterion for preference in selection and appointment.

23. Thus, the petitioners cannot be given appointment on the basis of preference which they are entitled as per the Regulations. They are only entitled for additional weightage which had already been given to them. They cannot claim appointment ignoring merit.

24. In view of the aforesaid analysis, the writ petition deserves to be dismissed and is accordingly, dismissed leaving the parties to bear their own cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge