

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPS No. 4409 of 2017

Ajit Kumar Tripathi S/o Shri Premprakash Tripathi, Aged About 29 Years R/o Teli Toli Ward No. 8 Police Station Jashpur Tehsil Jashpur District Jashpur Chhattisgarh

---- Petitioner

Versus

1. State Of Chhattisgarh Through The Secretary, General Administrative Department, Chhattisgarh Mahanadi Bhawan New Raipur.
2. Chief Electoral Officer Of Chhattisgarh Shastri Chowk Old Mantralaya Premises Raipur Chhattisgarh
3. District Electoral Officer Of Jashpur, Collector Office, Jashpur District Jashpur Chhattisgarh
4. Prashant Gour, S/o Shri R.P. Gour, Aged About 30 Years R/o Near Rest House Civil Line Jashpur District Jashpur Chhattisgarh

---- Respondents

For Petitioner	:	Shri Rohitashva Singh, Advocate
For State	:	Shri Manish Nigam, Panel Lawyer
For Respondent No.4	:	Shri Arun Shukla, Advocate

S.B. Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

10/11/2017

Heard.

1. By this petition under Article 226 of the Constitution of India, the petitioner challenges correctness and validity of the process of selection of appointment on the post of Assistant Programmer initiated vide advertisement dated 13th February 2015.
2. Learned counsel for the petitioner would make a pointed submission that though in the advertisement, as per the procedure prescribed, selection comprised of preparation of preliminary merit list of the candidates based

on the marks obtained in the qualifying examination to be followed by computer skill test and thereafter preparation of final merit list, the respondents adopted a different procedure than what was advertised by them inasmuch as they proceeded to hold written examination. He submits that adopting a procedure of written examination for assessment of merits of the candidates amounts to changing the rule of game after the process of selection began, which is illegal in view of the decision of the Supreme Court in the case of **K. Manjusree Vs. State of A.P. & Anr.** (2008) 3 SCC 512.

Learned counsel for the petitioner further submits that the petitioner had been continuously making representations and applying for disclosure of information under Right to Information Act, 2005 and because of delay in receipt of necessary information, the petitioner could file this petition only on 22nd August 2017.

3. Per contra, learned counsel for the State would submit that the petition is liable to be dismissed on the ground of suppression of the fact that the petitioner without raising any objection to the holding of written examination, participated in the written examination and appeared in it and it is only when he could not succeed that he has filed this petition that too belatedly one year after the appointment order was issued. He submits that the inclusion of written examination was only intended to select most meritorious candidate and therefore even if there has been change in the procedure, it does not invalidate the process of selection.
4. Learned counsel appearing for respondent No.4 submits that respondent No.4 duly appeared in the written examination and on the basis of merit, he was selected and appointed vide order dated 24.6.2016 and this petition has been filed after more than one year of his appointment. Therefore, the petition may be dismissed.
5. Though there is no quarrel with the settled legal position that selection criteria has to be prescribed in advance and rules of game cannot be

changed afterwards, reiterated in plethora of decisions of the Apex Court, at the same time, it is also settled legal position that a person who participated in the process of selection without any objection could not be allowed to assail correctness of the process of selection merely because he could not succeed in the process of selection to which he subjected himself in this regard.

6. True it is that in the advertisement, it was declared that a preliminary merit list based on the marks obtained in the qualifying examination would be prepared and thereafter the candidates would be called for computer skill test and then a final select list would be prepared and advertisement did not prescribe that written examination will also be held, it is an admitted position on record that when a notice of written examination was issued on 14.8.2015 that written examination would be held on 23.8.2015, the petitioner did not raise any objection and he participated in the process of selection and did write the written examination. There is no material on record that the petitioner before sitting in the written examination had submitted any objection. This would mean that the petitioner did not object to holding of written examination but participated in it without any protest. It is only when the petitioner found that he was not selected in the written examination, that he started raising objection.
7. It is also found that the petitioner has suppressed the fact that he had appeared in the written examination. This fact was disclosed only in return of the respondent.

The fact that the petitioner had appeared in the written examination was most material fact which has been suppressed in this petition.

Grant of relief under Article 226 of the Constitution of India is discretionary in nature and Writ Court does not come to the aid of those who has not come with clean hands.

8. For reasons sated herein-above, I am not inclined to grant any relief to the

petitioner.

9. The petition is accordingly dismissed.

Sd/-
(Manindra Mohan Shrivastava)
Judge

Praveen