

HIGH COURT OF CHHATTISGARH, BILASPUR**WP (S) No. 7331 of 2006**

Ramswaroop Sahu aged about 34 years, son of Shri Khuman Singh Sahu, Resident of village-Bhendra, Tahsil Kurud, District Dhamtari (CG)

---- Petitioner

Versus

1. State of Chhattisgarh Through Secretary Deptt. Panchayat, D.K.S.Bhawan, Raipur (CG)
2. Chief Executive Officer Panchayat, District Dhamtari (CG)
3. Collector District Dhamtari (CG)
4. District Education Officer Dhamtari, District Dhamtari (CG)
5. Uma Bai Sahu, aged about 28 years, D/o Som Nath Sahu, R/o Risali, Bhilai, District Durg (CG)

---- Respondents

For Petitioner	:	Mrs.Renu Kochar, Advocate
For Res.No.1, 3 and 4	:	Mr.Bhaskar Payasi, P.L.
For Res.No.2	:	Mr.B.L.Sahu under the authority of Mr.A.S.Kachhawaha, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

04/05/2017

1. By way of this writ petition, the petitioner has challenged the appointment of respondent No.5 on the post of Shiksha Karmi Grade-I appointed by Zila Panchayat, Dhamtari.
2. In response to the advertisement issued by Zila Panchayat, the petitioner applied for the post of Shiksha Karmi Grade-I in subject category Accountancy. Respondent No.5 also applied for the post of Shiksha Karmi Grade-I in subject

category Applied Economics. After completion of recruitment process, the petitioner obtained 67.79% marks and his position was second in the merit list, whereas respondent No.5, who applied in subject category Applied Economics, has obtained 62.07% marks. Thus, the petitioner and respondent No.5 both have applied in different subject categories. When respondent No.5 was appointed for the post of Shiksha Karmi Grade-1 and the petitioner was not appointed, he has filed this writ petition stating inter-alia that he has obtained higher marks than respondent No.5, but he has not been appointed, however, respondent No.5 has been appointed and therefore, her appointment is not in accordance with law and process of recruitment including the advertisement is not accordance with law and Rule 5 of the C.G. Panchayat Shiksha Karmi (Recruitment and Conditions of Services) Rules, 1997 (hereinafter called as "Rules of 1977") has not been followed.

- 3.** The respondents have filed their return opposing the writ petition.
- 4.** Mrs.Renu Kochar, learned counsel appearing for the petitioner, would submit that post published was not in accordance with the Rules of 1997. She would further submit that the petitioner has got more marks than respondent No.5, yet he has not been appointed for the

post of Shiksha Karmi Grade-I, therefore, entire selection process be quashed. She would also submit that comparative merit list has not been prepared, it ought to have been prepared and there is no master decree in Accountancy and Applied Economics.

5. On the other hand, learned counsel of the State and respondent No.2 would oppose the writ petition.
6. I have heard learned counsel appearing for the parties, considered their rival submissions made herein and also gone through the record with utmost circumspection.
7. It is not in dispute that the petitioner has applied for the post of Shiksha Karmi Grade-I in subject category Accountancy, whereas respondent No.5 has applied for subject category Applied Economics. The petitioner is not entitled to question the appointment of respondent No.5 as he never applied for this post in Applied Economics, therefore, comparison with respondent No.5 is completely erroneous. The petitioner has appeared in the examination pursuant to the advertisement and also appeared in the interview and he has secured second position in the merit list, now he cannot be permitted to question the selection process.
8. 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.

9. In the matter of **Madan Lal v. State of Jammu & Kashmir**¹ in similar 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

1 (1995) 3 SCC 486

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* 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.** Aforesaid judgment of the Supreme Court in **Madan Lal** (supra) has been followed with approval in **Dhananjay Malik and others Vs. State of Uttaranchal and others**², **Vijendra Kumar Verma Vs. Public Service Commission, Uttarakhand and others**³, **Ramesh Chandra Shah and others Vs. Anil Joshi and others**⁴ and **Madras Institute of Development Studies and another Vs. Dr.K. Sivasubramaniyan and others**⁵.

- 11.** Therefore, the petitioner having appeared in the entire recruitment process initiated way back on 7.6.2006 consciously and willingly, cannot be allowed to question the appointment of respondent No.5 in a writ petition on the ground that Rule 5 of the Rules of 1997 has not been followed. He has taken a calculated chance to get a berth in the said recruitment but finding that he was not being

2 (2008) 4 SCC 171

3 (2011) 1 SCC 150

4 (2013) 11 SCC 309

5 AIR 2015 SC 3643.

successful, he decided to file writ petition questioning the selection process is not in accordance with law and Rule 5 of the Rules of 1997 has not been followed. The petitioner having participated cannot be allowed to challenge the appointment of respondent No.5. I do not find any good ground to entertain this writ petition.

12. Accordingly, the writ petition is dismissed leaving the parties to bear their own cost(s).

Sd/-

(Sanjay K. Agrawal)
JUDGE

B/-