

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

Date of decision: 02.06.2017

CWP No.5661 of 2017

Virender Dhanda

...Petitioner

Vs.

Union of India through Secretary, Ministry of Defence, New Delhi & others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Munish Mittal, Advocate, for the petitioner.

Mr. P.S.Sidhu, Advocate, for respondents No.1 to 6.

Mr. Sanjeev Manrai, Senior Advocate, with
Mr. Gaurav Talwar, Advocate, for respondent No.7.

RAJIV NARAIN RAINA, J. (ORAL)

This writ petition suffers from suppression of material facts which have been deliberately withheld by the petitioner to continue his service as a dental doctor in ECHS clinic at Karnal. The omission in the petition is fatal to the action and the same deserves to be dismissed on this account. If the Court was informed that the petitioner had participated in the process of selection and remained unsuccessful, the stay order would not have followed. If the stay order had not been passed, the 7th respondent would naturally have been appointed in ECHS Karnal being in merit position 1. This is one of the two star arguments on maintainability and merits raised by Mr. Sanjeev Manrai, learned senior counsel representing the 7th respondent and in support of the second submission he cites the recent judgment of the Supreme Court in Ashok Kumar & another Vs. State of

Bihar & others, 2017 (1) SCT 116 with special emphasis on paragraphs 10 to 13 of the report. In this case, the Supreme Court observed by reiterating the well-settled principle that a challenge brought after remaining unsuccessful in the selection would have to be precluded. The principle of estoppel would operate. The Supreme Court revisited its earlier dicta in Chandra Prakash Tiwari Vs. Shakuntala Shukla, (2002) 6 SCC 127 to go to the extent of holding that when the candidate was found to be not successful, a challenge to the process is precluded. The question of entertaining a petition challenging the examination would not arise where a candidate has appeared and participated. He or she cannot subsequently turn around and contend that the process was unfair or that there was a lacuna therein merely because the result is not palatable.

It may be noticed that on 31.05.2017, I passed the following interim order, which summarizes the case:

“Written statement on behalf of respondents No.1 to 6 has been filed. Taken on record. Copy supplied.

Mr. Vijay Pal, Advocate, appears on behalf of the petitioner and prays for time on the ground that the arguing counsel is not in town.

However, on the other hand, Mr. Sanjiv Manrai, learned senior counsel appearing on behalf of 7th respondent and Mr. P.S.Sidhu, representing respondents No.1 to 6 have apprized the Court that the continuance of the status quo order is not justified because: (i) there was material concealment of facts, which is that the petitioner was not even in the waiting list of the selected candidates; & (ii) the 7th respondent was at No.1 in the selection list with her choice of posting in ECHS at Karnal and as per choice the 7th respondent should have been adjusted in Karnal as per merit, but the appointing authority did not pay heed to the preference/choice of the topper and adjusted two other

candidates at Nahan and Ambala and offered appointment to the petitioner at Karnal, which has ex facie denied appointment to the 7th respondent as per merit.

Apart from the above, Mr. Sidhu states that the petitioner was at merit position No.8 out of 9 candidates and this fact has not been disclosed in the writ petition and it suffers from apparent suppression of material facts and can be dismissed for this reason.

In order to answer this, the case will be taken up at No.1 on coming Friday i.e. 02.06.2017.”

I have every reason to refuse entertaining this petition any further after concealment is exposed and would order the dismissal of the petition with costs of ₹50,000/- to be paid to 7th respondent for the injury and loss caused to her by being deprived of salary upon a suppression of facts which were actively concealed to obtain a stay order.

Consequently, a direction is issued to the respondent authorities to replace the petitioner with the 7th respondent immediately by offering appointment to the latter in Karnal, being her first option in case of selection and as per merit.

02.06.2017
Vimal

[RAJIV NARAIN RAINA]
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes</i>
<i>Whether Reportable:</i>	<i>No</i>