

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

Civil Writ Petition No.8276 of 2017
Date of Decision: September 28, 2017

Dr.Rajasri Bhattacharyya

...Petitioner

Versus

The Central Administrative Tribunal, Sector 17, Chandigarh & others

...Respondents

**CORAM: HON'BLE MR.JUSTICE AJAY KUMAR MITTAL
HON'BLE MR.JUSTICE AMIT RAWAL**

Present: Ms.Jagdeep Bains, Advocate,
for the petitioner.

AMIT RAWAL, J.

1. The challenge in the present writ petition is to the two orders dated 22.12.2016 and 10.2.2016 (Annexures P-1 & P-2)) rendered by the Central Administrative Tribunal, Chandigarh Bench (for short "CAT") dismissing R.A.No.060/00014/2016 and O.A.No.060/1063/2014 respectively.

2. Ms.Jagdeep Bains, learned counsel for the petitioner submitted that the petitioner had passed her M.Sc. (Biochemistry) from Calcutta University in the year 1999 and in the year 2005 was awarded with Ph.D degree by Jadavpur University. She worked as Research Associate at Bose Institute, Kolkata from 2005-2008 and thereafter as Senior Demonstrator at PGIMER, Chandigarh from 2008-2011.

3. In the year 2010, respondent No.7, which is an Institute of Microbial Technology (IMT), Sector 39-A, Chandigarh, caused a

publication for filling up various posts of Scientists. The petitioner, being fully eligible, applied for the same through proper channel. She received a call letter for interview in July, 2010 and participated in the interview held on 31.8.2010, but formal result of the selection was not published. In the year 2011, respondent No.7 again caused an advertisement for various Scientific posts vide Advertisement No.10/2011. The petitioner-applicant also applied for such post and she was interviewed in pursuance to the call letter dated 2.9.2013 issued to her, but again no formal result was published till date. In December, 2013, respondents issued appointment letters to some of the candidates without formally publishing merit/select list. The information sought under the Right to Information Act revealed that there were following irregularities in the selection process and interview:-

- a) The Selection Committee was not proper but was illegal;
- b) The Selection Committee evolved cut off marks without having any explicit jurisdiction;
- c) The parameters revealed by the Selection Committee were also without jurisdiction;
- d) Against 5 posts, 37 candidates were shortlisted for interview and interview happened in two days;
- e) There was no formal publication of the merit list;
- f) Marks were not assigned under different heads;
- g) Members of the Selection Committee were not provided separate marks award sheet;

4. All these points were fully agitated before the CAT, but the same have erroneously been rejected by assigning reasons, which were unjustified in law.

5. In fact, the respondents failed to place on record any copy of the formally published merit list, thus, the entire selection process was in a clandestine manner. There was no transparency. The entire process of

selection lacked the applicability of transparency and prudence, therefore, the orders under challenge are liable to be set-aside.

6. We have heard the learned counsel for the petitioner, appraised the paper book and are of the view that there is no force and merit in the submissions of the learned counsel for the petitioner. The aforementioned contentions were refuted by the department in its detailed reply filed before the CAT, wherein it was stated that the Selection Committee conducted the selection process in accordance with CSIR Scientist Recruitment and Assessment Promotion Rules, 2001 (in short “2001 Rules”) as also by evolving its own criteria for selection of the candidates as per said rules. The said selection process was not challenged by the applicant either before applying in pursuant to the advertisement No.10/2011 or even in the Original Application.

7. The applicant-petitioner secured 22 marks out of maximum of 70 and the result of the selection process was displayed on the website of the respondent-Institute. The applicant along with 36 other candidates participated in the selection process in pursuance to the advertisement No.10/2011 and the name of the applicant-petitioner was not recommended. Even the mark-sheets finalized by the Selection Committee have already been made available to the applicant.

8. The primary question that now arises for consideration in view of the aforementioned factual matrix is as to whether a person, who has participated in the selection process, can challenge the eligibility of the successful candidates and the selection process. The answer in the aforementioned matter has been negated by the judgment rendered by the Apex Court in **Madras Institute of Development Studies and another**

Versus K.Sivasubramanian & others, (2016) 1 Supreme Court Cases

454, wherein it has been held that where a candidate takes part in the selection process, cannot turn around and question the same very selection process. For the sake of brevity, relevant portion of the judgment (supra) is reproduced herein below:-

“14. The question as to whether a person who consciously takes part in the process of selection can turn around and question the method of selection is no longer res integra.

15. In G.Sarana v. University of Lucknow, (1976) 3 SCC 585, a similar question came up for consideration before a three-Judge Bench of this Court where the fact was that the petitioner had applied to the post of Professor of Anthropology in the University of Lucknow. After having appeared before the Selection Committee but on his failure to get appointed, the petitioner rushed to the High Court pleading bias against him of the three experts in the Selection Committee consisting of five members. He also alleged doubt in the constitution of the Committee. Rejecting the contention, the Court held: (SCC p.591, para 15)

"15. We do not, however, consider it necessary in the present case to go into the question of the reasonableness of bias or real likelihood of bias as despite the fact that the appellant knew all the relevant facts, he did not before appearing for the interview or at the time of the interview raise even his little finger against the constitution of the Selection Committee. He seems to have voluntarily appeared before the committee and taken a chance of having a favourable recommendation from it. Having done so, it is not now open to him to turn round and question the constitution of the committee. This view gains strength from a decision of this Court in Manak Lal v. Prem Chand Singhvi, AIR 1957 SC 425, where in more or less similar

circumstances, it was held that the failure of the appellant to take the identical plea at the earlier stage of the proceedings created an effective bar of waiver against him. The following observations made therein are worth quoting: (AIR p.432, para 9)

"9.....It seems clear that the appellant wanted to take a chance to secure a favourable report from the tribunal which was constituted and when he found that he was confronted with an unfavourable report, he adopted the device of raising the present technical point."

16. In Madan Lal v. State of J & K, (1995) 3 SCC 486, similar view has been reiterated by the Bench which held that: (SCC p.493, para 9.

"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 turn round 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,

1986 Supp SCC 285, 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.”

17. In Manish Kumar Shahi v. State of Bihar, (2010) 12 SCC 576, this Court reiterated the principle laid down in the earlier judgments and observed: (SCC p.584, para 16).

"16. We also agree with the High Court that after having taken part in the process of selection knowing fully well that more than 19% marks have been earmarked for viva voce test, the petitioner is not entitled to challenge the criteria or process of selection. Surely, if the petitioner's name had appeared in the merit list, he would not have even dreamed of challenging the selection. The petitioner invoked jurisdiction of the High Court under Article 226 of the Constitution of India only after he found that his name does not figure in the merit list prepared by the Commission. This conduct of the petitioner clearly disentitles him from questioning the selection and the High Court did not commit any error by refusing to entertain the writ petition."

18. In Ramesh Chandra Shah v. Anil Joshi, (2013) 11 SCC 309, recently a Bench of this Court following the earlier decisions held as under: (SCC p.320, para 24).

"24. In view of the propositions laid down in the above noted judgments, it must be held that by having taken part in the process of selection with full knowledge that the recruitment was being made under the General Rules, the respondents had waived their right to question the advertisement or the methodology adopted by the Board for making selection and the learned Single Judge and the Division Bench of the High Court committed

grave error by entertaining the grievance made by the respondents."

9. In the present case, there was no written test. The rule did not prescribe that the candidates numbering more than thrice cannot be called. The Selection Committee considered the appointment of only 6 candidates, who secured more than 75% marks, which was the condition. The marks awarded by the Selection Committee in the interview were to its satisfaction, which consisted of experts and various other intellectual persons and the Courts shall not re-appreciate the selection process until and unless any glaring illegality or malafides have been attributed, which are conspicuously absent herein.

10. The CAT also found that each member of the Selection Committee had assigned marks to each candidates independently by maintaining the proper record. The applicant had not secured the qualifying marks and was far behind the selected candidates and no shortcomings or ineligibility of the selected candidates had been pointed out.

11. It is a matter of coincidence that each one of the selected candidates working in an adhoc capacity in the respondent institute could secure more than 75% marks, therefore, it is found to be not unusual. Even the petitioner did not succeed in re-agitating the matter by filing the review as she could not point out any error apparent on record. The review application was filed re-agitating the matter, which is not permissible in view of the *ratio decidendi* culled out by the Hon'ble Supreme Court in **Tamilnadu Terminated Full Time Temporary LIC Employees Association Vs. S.K. Roy, The Chairman, Life Insurance Corporation of India and another, 2016 (9) SCC 366.** The relevant paragraph of the judgment reads

as under:-

*"Review is not re-hearing of an original matter. The power of review cannot be confused with appellate power which enables a superior court to correct all errors committed by a subordinate court. A repetition of old and overruled argument is not enough to re-open concluded adjudications. This Court, in **Jain Studios Ltd. v. Shin Satellite Public Co. Ltd. (2006) 5 SCC 501**, held as under:*

11. So far as the grievance of the applicant on merits is concerned, the Learned Counsel for the opponent is right in submitting that virtually the applicant seeks the same relief which had been sought at the time of arguing the main matter and had been negated. Once such a prayer had been refused, no review petition would lie which would convert rehearing of the original matter. It is settled law that the power of review cannot be confused with appellate power which enables a superior court to correct all errors committed by a subordinate court. It is not rehearing of an original matter. A repetition of old and overruled argument is not enough to reopen concluded adjudications. The power of review can be exercised with extreme care, caution and circumspection and only in exceptional cases."

12. As an upshot of our findings, we do not find any illegality or perversity in the impugned orders. The same cannot be faulted. Resultantly, the writ petition is dismissed.

**(AJAY KUMAR MITTAL)
JUDGE**

**(AMIT RAWAL)
JUDGE**

September 28, 2017
ramesh

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No