

HIGH COURT OF CHHATTISGARH, BILASPURWrit Petition (S) No.5916 of 2010

Santosh Banjare, S/o Shri Ghurwadas Banjare, Aged about 32 years,
R/o Tilka Para, Ward No.9, Bhimrao Ambedkar Marg, Navagarh,
District Durg (C.G.)

---- Petitioner

Versus

1. State of Chhattisgarh, Through the Secretary, Department of Urban Administration and Development, D.K.S. Bhawan, Raipur (C.G.)
2. Deputy Director, Urban Administration and Development, Regional Office, Subhash Stadium, Moti Bag, Raipur (C.G.)
3. Project Officer, District Town Development Agency, Durg (C.G.)
4. Nagar Panchayat Nawagarh, Through the Chief Municipal Officer, Nawagarh, Tahsil Bemetara, District Durg (C.G.)
5. Mahendra Kumar, S/o Shri Janak Das Lal, Aged about 36 years, R/o Ward No.13, Band Par, Nawagarh, Tahsil Bemetara, District Durg (C.G.)

---- Respondents

For Petitioner: Mr. Jitendra Pali and Mr. Vikas Dubey, Advocates.
For Respondents No.1 and 2 / State:-
Ms. Sunita Jain, Panel Lawyer.
For Respondent No.4: Mr. Amrito Das, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

19/01/2018

1. Advertisement for the posts of Sanitary Inspector and Cashier was issued by Nagar Panchayat, Nawagarh – respondent No.4 herein and applications were invited in which the petitioner as well as respondent No.5 also appeared and District Selection Committee was constituted and after scrutinising the applications, interview of the candidates was conducted in which the petitioner appeared in the said interview without any demur and when the result of interview was declared on

30-12-2008, respondent No.5 was appointed on the post of Sanitary Inspector. On 3-1-2009, appointment order was issued in favour of respondent No.5. This writ petition was filed on 6-10-2010 questioning the appointment of respondent No.5.

2. Mr. Pali, learned counsel appearing for the petitioner, would submit that on 6-10-2010, the petitioner preferred writ petition challenging the selection process and appointment of respondent No.5 on the post of Sanitary Inspector principally on the ground that in the interview, 40% marks were reserved and allotted to the candidates including respondent No.5 which is arbitrary and runs contrary to the decisions rendered by the Supreme Court in the matters of **Ajay Hasia and others v. Khalid Mujib Sehravardi and others**¹, **Ashok Kumar Yadav and others v. State of Haryana and others**² and **Satpal and others v. State of Haryana and others**³, and also on the ground that the selection process was not clearly indicated in the advertisement.
3. Mr. Das and Ms. Jain, learned counsel appearing for the respective respondents, would submit that the petitioner has participated in the selection process without any protest and he appeared in the interview and upon declaration of result, when he was not selected, he decided to file writ petition with a delay of 1½ years which suffers from delay and laches, as well as the petitioner having participated in the selection process without objection is not entitled to assail the selection process and the subsequent order of appointment of respondent No.5.
4. I have heard learned counsel for the parties and considered the rival

1 (1981) 1 SCC 722

2 (1985) 4 SCC 417

3 1995 Supp (1) SCC 206

submissions made herein-above and also gone through the record with utmost circumspection.

5. 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.
6. In the matter of **Madan Lal v. State of Jammu & Kashmir**⁴ 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 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*⁵ it has

4 (1995) 3 SCC 486

5 AIR 1986 SC 1043

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."

7. Aforesaid judgment of the Supreme Court in **Madan Lal** (supra) has been followed with approval in the matters of **Dhananjay Malik and others v. State of Uttaranchal and others**⁶, **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 v. Dr. K. Sivasubramaniyan and others**⁹.
8. Thus, the petitioner having appeared in the entire recruitment process initiated way back on 29-8-2008 consciously and willingly, cannot be allowed to question the process of selection including the award of marks in the interview in a writ petition filed after 1½ years on 6-10-2010, whereas the selection process stood completed on 30-12-2008. The petitioner took a calculated chance to get a berth in the said recruitment but finding that he is not selected, he decided to file writ petition with a delay of 18 months questioning the selection process that it is not in accordance with law. The petitioner 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.
9. Apart from this, the petition also suffers from delay and laches, as the order of appointment was issued in favour of respondent No.5 on 3-1-2009 which has attained finality and the same was sought to be

6 (2008) 4 SCC 171

7 (2011) 1 SCC 150

8 (2013) 11 SCC 309

9 AIR 2015 SC 3643

challenged in the writ petition filed on 6-10-2010. There is no plausible explanation on behalf of the petitioner as to why such a delay has occurred except saying that he made application seeking information under the Right to Information Act, 2005. Such an explanation cannot be accepted.

10. The petitioner's further argument that the process of recruitment was not indicated in the advertisement is not available to the petitioner in view of the decisions cited herein-above by this Court. In view of the findings arrived herein-above, the judgments cited by learned counsel for the petitioner are not applicable to the facts of the present case.
11. As a fallout and consequence of aforesaid discussion, I do not find any merit in the petition and the petition is accordingly dismissed. No order as to cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge