

HIGH COURT OF CHHATTISGARH, BILASPUR
WPS No.4714 of 2017

Arun Kumar Dhruv S/o Shri Falit Singh Dhruv, aged about 26 years, R/o Village Salfa, Post Sargaon, District Mungeli (CG)

---- Petitioner

Versus

1. State of Chhattisgarh, through the Secretary, Department of Revenue and Disaster Manager, Mahanadi Bhawan, Mantralaya, New Raipur (CG)
2. Collector, Mungeli, District Mungeli (CG)
3. Chhattisgarh Professional Examination Board, Raipur, District Raipur (CG)

---- Respondents

WPS No.7097 of 2017

Geetanand Pande Son of Khorbahra Ram Pande, aged about 26 years, R/o. Ward No.16, Street No.3, House No.563, Near Masjid, Jayanti Nagar, Durg (CG)

---- Petitioner

Versus

1. State of Chhattisgarh, through the Secretary, Revenue and Disaster Management Department, Mantralaya, Mahanadi Bhawan, New Raipur, District Raipur (CG)
2. Collector, Durg, District Durg (CG)
3. Chhattisgarh Professional Examination Board, Through its Secretary, Office at Raipur, District Raipur (CG)
4. Gagan Kumar son of Sujan Kumar, 3/290, Akhara, Tahsil Patan, District Durg (CG)
5. Mohit Kumar son of Shiv Kumar, Darbar Mokhali, District Durg (CG)
6. Pawan Kumar Sahu son of Mulchand Sahu, R/o. Sikola Basti, Ward No.16, Gajendra Kirana Store, District Durg (CG)

---- Respondents

And

WPS No.5540 of 2017

Nilesh Kumar S/o Shri Panchram Sahu, Aged about 28 years, R/o Village & Post Anda, Civil & Revenue Distt. Durg (CG)

---- Petitioner

Versus

1. State of Chhattisgarh Through Secretary, Revenue and Calamity Management Department, Mahanadi Bhavan, Mantralaya, Naya Raipur, District Raipur (CG)
2. Collector, District Durg (CG)
3. Vivek Dewangan s/o Shtruhan Lal Dewangan, R/o 94-C B.S.P. Colony, Ruanbandha Sector, Bhilai, Distt. Durg (CG)
4. Harish Kumar Verma S/o Badri Prasad Verma R/o Village Pahanda, Tahsil Patan, Karela, Distt. Durg (CG)

5. Rajendra Kumar Vaishnav S/o Kanshidas Vaishnav, R/o QR-921 infront of New Subodh School, Ward No.14, Bhilai, Kurud
6. Sushant Kumar Thakur S/o Sudesh Kumar Thakur R/o Infront of Bajrang Hotel, Bajrang Para, Ward No.57, Urla, Distt. Durg (CG)
7. Gagan Kumar S/o Sujan Singh R/o 3/290 Village Akhra, Tahsil Patan, Distt. Durg (CG)
8. Mohit Kumar S/o Shiv Kumar Village Darbar Mokhli, Distt. Durg (CG)
9. Pawan Kumar Sahu S/o Mulchand Sahu R/o Gajendra Kirana Store, Ward No.16, Behind Hanuman Mandir, Sikola Basti, Durg, Distt. Durg (CG)

---- Respondents

For Petitioner	:	Mr.Kishore Narayan, Advocate in WPS No.4714 of 2017
For Petitioner	:	Mr.Avinash Chand Sahu, Advocate in WPS No.7097 of 2017
For Petitioner	:	Mr.Mayank Chandrakar, Advocate in WPS No.5540 of 2017
For State	:	Mr.Shashank Thakur, G.A. and Mr.Ashish Surana, P.L.

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

25/1/2018

1. Since common question of law and fact is involved in these batch of writ petitions, they are heard together and are being disposed of by this common order.
2. The State Government has issued an advertisement for appointment on the post of Patwari, in which the petitioners have applied for the said post, they appeared in the examination and participated in the interview and after counselling their candidatures have been rejected on the ground that they do not possess educational qualifications as they are not having PG Diploma in Computer Application. Feeling aggrieved against rejection of their candidature, the present batch of writ petitions have been filed.

- 3.** Mr.Kishore Narayan, Mr.Avinash Chand Sahu and Mr.Mayank Chandrakar, learned counsel for the respective petitioners, would submit that similarly situated candidates have been allowed to appear in the examination in other districts and they have also been appointed on the post of Patwari, therefore, the present petitioners are also entitled to be appointed. They would further submit that educational qualification i.e. PG Diploma in Computer Application prescribed by notification dated 23.1.2015 is not applicable to the case of the present petitioners. Therefore, a writ be issued directing the respondent-State to appoint the petitioners on the post of Patwari.
- 4.** On the other hand, Mr.Shashank Thakur, learned Government Advocate and Mr.Ashish Surana, learned Panel Lawyer for the State, would submit that the petitioners have appeared in the examination and participated in the interview and since they do not possess requisite educational qualifications as they are not having PG Diploma in Computer Application, their applications have rightly been rejected.
- 5.** I have heard learned counsel for the parties and considered their rival submissions made hereinabove and also gone through the record with utmost circumspection.
- 6.** Submission of learned counsel for the petitioners that similarly situated candidates were allowed to participate holding them to be eligible, do not help the petitioners. If the petitioners do not possess eligible qualifications as prescribed in the

advertisement, no relief can be granted by taking recourse to Article 14 of the Constitution of India as negative equality cannot be enforced. Thus, if any candidate has been wrongly allowed to appear in the examination even though he does not possess requisite educational, illegality cannot be perpetuated by granting the relief as claimed by them.

7. The Supreme Court in the matter of Union of India and others Vs. M.K. Sarkar¹ considered this aspect of the matter and held as under:-

“25. There is another angle to the issue. If someone has been wrongly extended a benefit, that cannot be cited as a precedent for claiming similar benefit by others. This court in a series of decisions has held that guarantee of equality before law under Article 14 is a positive concept and cannot be enforced in a negative manner; and that if any illegality or irregularity is committed in favour of any individual or group of individuals, others cannot invoke the jurisdiction on courts for perpetuating the same irregularity or illegality in their favour also, on the reasoning that they have been denied the benefits which have been illegality extended to others. (See Chandigarh Administration vs. Jagdish Singh²; Gursharan Singh & Ors. vs. New Delhi Municipal Committee & Ors.³; Faridabad C.T. Scan Centre vs. Director General, Health Services⁴; State of Haryana vs. Ram Kumar Mann⁵, State of Bihar & Ors. vs. Kameshwar Prasad Singh & Anr.⁶ and Union of India vs. International Trading Company⁷).

26. A claim on the basis of guarantee of equality, by reference to someone similarly placed, is permissible only when the person similarly placed has been lawfully granted a relief and the person claiming relief is also lawfully entitled for the same. On the other

1 (2010) 2 SCC 59

2 1995 (1) SCC 745

3 1996 (2) SCC 459

4 1997 (7) SCC 752

5 1997 (3) SCC 321

6 2000 (9) SCC 94

7 2003 (5) SCC 437

hand, where a benefit was illegally or irregularly extended to someone else, a person who is not extended a similar illegal benefit cannot approach a court for extension of a similar illegal benefit. If such a reUnion of India Vs. M.K.SarkarUnion of India Vs. M.K.Sarkarquest is accepted, it would amount to perpetuating the irregularity. When a person is refused a benefit to which he is not entitled, he cannot approach the court and claim that benefit on the ground that someone else has been illegally extended such benefit. If he wants, he can challenge the benefit illegally granted to others. The fact that someone who may be not entitled to the relief has been given relief illegally is not a ground to grant relief to a person who is not entitled to the relief. ”

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**⁸ 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*⁹ 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 the matters of **Dhananjay Malik and others v. State of Uttaranchal and others**¹⁰, **Vijendra Kumar Verma v. Public Service Commission, Uttarakhand and others**¹¹, **Ramesh Chandra Shah and others v. Anil Joshi and others**¹², and **Madras Institute of Development Studies and another v. Dr. K. Sivasubramaniyan and others**¹³.

- 11.** Thus, the petitioners having appeared in the entire

9 AIR 1986 SC 1043

10 (2008) 4 SCC 171

11 (2011) 1 SCC 150

12 (2013) 11 SCC 309

13 AIR 2015 SC 3643

recruitment process consciously and willingly, cannot be allowed to question the process of selection. They took a calculated chance to get a berth in the said recruitment but finding that they are not selected, they decided to file writ petitions questioning the selection process that it is not in accordance with law. The petitioners 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.

12. Admittedly and undisputedly, the petitioners have participated in the selection process and also appeared in the interview/counselling. Since they were not selected, they have filed the present writ petitions questioning educational qualification prescribed for the post of Patwari. I do not find any good ground to entertain these writ petitions.

13. Accordingly, the writ petitions being without substance are liable to be and are hereby dismissed leaving the parties to bear their own cost(s).

Sd/-

(Sanjay K. Agrawal)
Judge

B/-