

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

965 WRIT PETITION NO. 5250 OF 2018

ROHIT DILIP PANDIT

..PETITIONER

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS ..RESPONDENTS

...

Mr. Avinash S. Deshmukh, Advocate for the
Petitioner.

Mrs. P. V. Diggikar, AGP for Respondent-State.

Mr. Shirinivas S. Wagh, Advocate for Respondent
No.3.

...

**CORAM : S. V. GANGAPURWALA &
SUNIL K. KOTWAL, JJ.**

DATED : 22nd JUNE, 2018.

PER COURT:-

1. Pursuant to the advertisement issued by the respondents, the petitioner had applied for the post of Stenographer (Lower Grade) from S.C. Category. The written examination, proficiency test and interviews were conducted. Final selection list was published. The present respondent no.3 was selected. Aggrieved thereby, the petitioner had preferred original application. The said original application is dismissed. Aggrieved thereby, the present writ petition.

2. Mr. Deshmukh, learned counsel for the petitioner submits that the petitioner had secured more marks than respondent no.3 in the written

(2)

examination as well as proficiency test, however, in the interview, respondent no.3 has been given more marks. According to the learned counsel, interviews could not have been conducted nor any marks could have been given for the interviews. Only on the basis of written examination and the proficiency test, the select list ought to have been prepared.

3. The learned counsel relies on Clause (1) of the advertisement, so also relies on the Government Resolution dated 05.06.2014 and submits that the Government has taken a policy decision that in selection of Class 'B' and 'C' employee, the oral examination is not to be undertaken. The learned counsel submits that it has been consistent policy of the Government not to take oral interviews, nor the marks in the oral interviews could be considered. The selection to the Class 'B' and 'C' post ought to be on the basis of written examination only. In spite of the policy of the Government well defined under the Government Resolution dated 05.06.2014 not to conduct oral interviews for the purpose of selection, the respondent no.2 on the basis of the interviews has selected the respondent no.3. The same is erroneous and against the record. The learned counsel relies on the judgment of the Apex Court in the case of Rajkumar and others Etc v/s. Shakti Raj and others Etc reported in AIR 1997 SUPREME COURT 2110 and submits that as the procedure was illegal

and arbitrary, the said selection can be cancelled. According to the learned counsel, as the petitioner had secured more marks than respondent no.3 in written examination as well as proficiency test, he ought to have been selected. The learned counsel prays for cancellation of the selection of respondent no.3 and to issue appointment order in favour of the petitioner.

4. Mr. Dighe, learned counsel refers to other Clauses of the advertisement and submits that as per the advertisement interviews were undertaken and marks of the interviews were also given. The total marks obtained by respondent no.3 are more than the petitioner. Respondent no.3 is rightly selected. The learned counsel further submits that the petitioner has participated in the selection process and now cannot challenge the same. The learned counsel relies on the judgment of the Apex Court in the case of Ashok Kumar and Ors. v/s. State of Bihar reported in 2017(4) SCC 357.

5. We have considered the submissions canvassed by the learned counsel for the respective parties, so also gone through the judgment delivered by the Maharashtra Administrative Tribunal. The marks obtained by the petitioner and respondent no.3 in the written examination, proficiency test and the interview are not the subject matter of debate. It is a fact that the petitioner has obtained more marks than respondent

(4)

no.3 in the written examination and proficiency test, however, respondent no.3 has obtained more marks than the petitioner in oral interview. If the total marks of the written examination, proficiency test and oral test are considered respondent no.3 has secured more marks. The parties had applied pursuant to the advertisement. Clause (1) of the advertisement states that the selection of the candidate would be done on the basis of marks in the written examination. Thereafter, Clause no.3 under the head selection process further prescribes that those candidates on the basis of merit in written examination and proficiency test would be called for interviews. Clause (6) further states that if, the relevant certificates are not produced, he will not be called for interview. Clause (8) further states that one who has passed in written examination will only be considered for further process. If, the advertisement is read in detail, the interview is very much part of the selection process has secured more marks. It also appears that under the Government Resolution dated 05.06.2014, a policy decision was taken not to conduct interview for Class 'B' and 'C' non-Gazetted post. The advertisement was certainly not inconsonance with the said Government Resolution. The advertisement prescribes conduct of interviews.

6. After the written examination and the proficiency test list was prepared, persons were

called for interviews and after the interviews were concluded, respondent no.3 got more marks. There are no malafides alleged against the members of the interviewing committee to suggest that respondent no.3 was favoured. The marks were allotted by the members of the interviewing committee and respondent no.3 got more marks. Had the petitioner challenged the selection process prior to participating in the selection process we could have considered the case of petitioner. The Petitioner on his own volition submitted to the selection process conducted pursuant to the advertisement and after having failed in the selection process has turned around and has challenged the said selection process. It would be too late in the day for the petitioner to assail the said selection after having participated in selection process. The judgment in the case of **Rajkumar and others Etc v/s. Shakti Raj and others Etc** (*Supra*) was on different footing, therein the procedure adopted was held to be illegal denying equal opportunity to many candidate waiting in the register of the concerned employment exchange.

7. In the case of **Ashok Kumar and Ors. v/s. State of Bihar** (*Supra*) it was observed that the appellant therein participated in the selection process without any protest. Having failed to raise any objection to the selection process, he was estopped from turning around and challenging

(6)

the selection once the appellants therein were declared unsuccessful. In the said case, the Apex Court observed that the selection process once conducted unless there is a patent or glaring illegality, the same may not be interfered.

8. In the present case there was no prejudice to any candidate. The selection process was uniform for all the candidates. The petitioner participated in the selection process and on being not selected has assailed the same.

9. In light of the above, the Tribunal has not committed any error in dismissing the original application.

10. In light of the above, writ petition is dismissed. No costs.

(SUNIL K. KOTWAL)
JUDGE

(S. V. GANGAPURWALA)
JUDGE