

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 18.01.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
AND
THE HONOURABLE MR.JUSTICE N.AUTHINATHAN

Writ Petition No.29981 of 2008
M.P.No.2 of 2008

M.Selvakumar

... Petitioner

v.

1. The Secretary,
Social Welfare & Nutritious Meal
Programme Department,
Secretariat, Fort St. George,
Chennai 600 009.
2. The Secretary,
Tamil Nadu Public Service Commission,
Omandurar Government Estate,
Chennai 600 002.

... Respondents

Prayer:

Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of Certiorarified Mandamus, to call for entire records in pursuant to impugned notification in Advertisement No.120, dated 01.08.2007, issued by the 2nd respondent and quash the same, insofar as not granting 3% reservation for the disabled persons, as per the Persons with Disabilities and Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 and consequently, direct the 2nd respondent to recommend the petitioner to the post of Deputy Collector and other posts as per the disabled reservation category. [Prayer amended as per the order, dated 12.07.2016 in W.M.P.No.16901 of 2016 in W.P.No.29981 of 2008]

For petitioner : Mr.Balan Haridass
for Mr.V.Stalin

For 1st respondent : Mr.K.V.Dhanapalan,
Spl. Government Pleader

For 2nd Respondent : Mr.C.N.G.Niraimathi

O R D E R
(Order of the Court was made by S.MANIKUMAR, J.)

Initially, the petitioner has challenged the impugned proceedings of the Secretary, Social Welfare & Nutritious Meal Programme Department, Chennai, 1st respondent herein, in G.O.Ms.No.53, dated 11.04.2015 and consequently, sought for a direction to the respondents to extend the benefit of 3% of reservation in Group "A" of Tamil Nadu State and Subordinate Services on the categories of post like Deputy Collector, Commercial Tax Officer, Deputy Registrar of Co-operative Societies and Assistant Director of Rural Development, so as to enable the disabled persons to be recruited to the aforesaid posts.

2. The petitioner has filed an amendment petition in W.M.P.No.16901 of 2016 in W.P.No.29981 of 2008. The said petition has been ordered on 12.07.2016. Amended prayer reads thus,

"Petition under Article 226 of the Constitution of India, praying for a Writ of Certiorarified Mandamus, to call for the records in pursuant to impugned notification in Advertisement No.120, dated 01.08.2007, issued by the Secretary, Tamil Nadu Public Service Commission, Chennai, 2nd respondent herein, and quash the same, insofar as not granting 3% reservation for the disabled persons, as per the persons with Disabilities and Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 and consequently, direct the 2nd respondent herein, to recommend the petitioner to the post of Deputy Collector and other posts as per the disabled reservation category."

3. The petitioner is an orthopedic-physically challenged person and his disability is 50%, as per the certificate issued by the Government of Tamilnadu, Department for Rehabilitation of the Disabled. He has applied for Group-I Services (Service Code 001) called for by the Tamilnadu Public Service Commission, vide notification, dated 01.08.2007. He has applied for the said examination under the category of physically challenged person. He was issued with a Hall Ticket and passed preliminary examination held on 23.12.2007. He was called for the main written examination held on 16.08.2008 and 17.08.2008 and attended the same. Though the result of the said main written examination was published by the Website of Tamil Nadu Public Service Commission, he was not selected for the Oral Test (interview) proposed to be held on 26.12.2008 to 03.01.2009. When he enquired, he came to know that no vacancies were created

for physically challenged persons, which is mandatory under law. Under the said notification, dated 01.08.2007, eight services were called for, out of which, 2 services, viz., The District Registrar and The District Employment Officers were identified for physically challenged persons. Number of vacancies for the said identified services were declared as 2 and 7 respectively. However, for the reasons not known, there was a stipulation mentioned in Para No.5E of the notification issued by the 2nd respondent that "However, no reserved turn for P.H.Candidates arises for this recruitment".

4. It is pertinent to note that the notification, dated 18.1.2007, issued by the Ministry of Social Justice and Empowerment, which was published in the gazette of India Extraordinary part-I, Section-I, the said Ministry, in pursuance of provisions of Sec-32 of the Disabilities Act, had constituted an expert Committee on 08.02.2005, under the Chairmanship of Additional Secretary, Ministry of Social Justice and Empowerment. Those Committees decided to form sub Committees for various categories of Disabled persons and recommendations were made to identify the services for Disabilities. Based on the said recommendations, civil services examination called for by the Union Public Service Commission, dated 29.12.2007, has identified the services of I.A.S, I.F.S, I.R.S (Customs and Central Exercise), I.R.S(Income Tax) and Delhi Police Services and etc. Therefore, the identification of services, made only for 2 Services, out of 8 Services, is arbitrary and not reasonable. The Social Welfare and Nutritious Meal Programme, Department of Tamil Nadu, might have identified some more services in the said 8 services called for by the Tamil Nadu Public Service Commission, as like the Central Notification.

5. The petitioner has further submitted that Section 33 of The Persons with the Disabilities (Equal Opportunities, Protection of rights and full participation) Act, 1995, contemplates that every appropriate government shall appoint in every establishment such percentage of vacancies not less than 3% for persons or class of persons with the disability. Though 2 services were identified for physically challenged persons, no vacancies were created and the reservation for physically challenged persons has not been followed. According to the petitioner, as the result, he was not selected for the said Oral Test (interview). If vacancies were notified for Disabled persons, he would have qualified for the Oral test (Interview).

6. The petitioner has further submitted that as per the G.O.No.36035/16/91-Estt (SCT), dated 18.02.1997 and subsequently modified by O.M.No.36025/33/97-Estt.(Res.), dated 04.07.1997 and read with O.M.No.36035/14/98-Estt.(Res.), dated 28.08.1998, issued by the Department of Personnel and Training Ministry of

Personnel, Public Grievances and Pensions for Reservation of posts and Services, for effecting the reservation for physically handicapped in Group A and B posts, a separate register of 100 points would be maintained in each identified post filled through Direct Recruitment in which points number 1, 34 and 67 in cycle of 100 vacancies in the 100 point register may be earmarked for reservation for physically handicapped. According to the petitioner, if the said roster had been followed and the vacancies would have been allotted for the physically challenged persons and he would have been selected for the said interview.

7. The petitioner has further submitted that if the details of Backlog vacancies, since 1995 (after the enforcement of the said Disabilities Act), is calculated the number of reserved vacancies may be increased. The Tamil Nadu State Government was the fore-runner in providing reservation of 3% in all State Public Enterprises, Educational Institutions under all kind of Management for Physically handicapped persons in the post where the rule of reservation is applicable for S.Cs/S.Ts, Backward classes and other communities, way back in the year 1981. The state Government have also amended Rule 22 of Tamil Nadu State & Subordinate Services. Initially, the state Government extended the reservations of 3% with respect to Executive Post of "C" and "D" categories in the state and Subordinate Services. Initially, reservation was not made for a physically handicapped persons in "A" & "B" categories of Services. After coming into force of the Persons with disabilities (Equal opportunities, protection of rights and full Participation) Act of 1995, the Government of India gave instructions to extend reservations for the physically handicapped persons in group "A" and "B" posts, through direct recruitments. Thereafter, state Governments have issued notifications, by ordering reservation for "A" and "B" categories as well and an Expert Committee was appointed to identify the Posts which can be reserved for the disabled persons. Thereafter, the Expert Committee submitted a report and the State Special Commissioner for Disabled had submitted a list of 117 posts suitable for disabled persons under "A" and "B" posts. Thereafter, the Government have approved the list of 117 posts identified under "A" and "B" categories under the purview of Teachers Recruitment Board and the TNPSC for persons with disabilities and the list of 117 categories of posts was given as annexure in the impugned order in G.O.Ms.No.53, dated 11.4.2005. Since the respondents have failed to comply with the mandatory provisions of law and also not followed the guidelines and directions issued by the Hon'ble Apex Court. Left with no other efficacious alternative remedy, the petitioner has filed this present writ petition, for relief, as stated supra. Some of the grounds raised in the present writ petition are as follows:

"(a) The identification of post to be manned by the physically handicapped persons done by the Government of India was based on reasonable and rational criteria. Whereas the identification effected by the State of Tamil Nadu is appeared to have been based on no reasonable or rational criteria. Therefore, the exclusion of certain services from the identification made by the 1st Respondent being manned by physically handicapped persons would be absolutely arbitrary and violation of Article 14 and 16. Hence the impugned order is liable to be struck down.

(b) The stipulation mentioned in Para No.5 E of the notification of the 2nd Respondent, dated 01.08.2007 to the effect that no reserved turn for P.H.Candidates arises for this recruitment is unfair, unreasonable and violation of Article 14 and 16 of the Constitution of India.

(c) The roster system was not followed by the respondents herein and if the backlog vacancies are taken into account the petitioner would have selected for the Oral Test (Interview).

(d) The impugned order per-se discriminates the disabled persons from competing with persons from others categories to the posts not identified in the impugned order. The impugned order will not satisfy the equality clause and hence the same is liable to be quashed. The disabled persons are entitled to creation of quota in other posts in Group "A" of the Tamil Nadu State Subordinate Services and this fact has been completely lost sight of by the Expert committee which went into identification of posts under "A" and "B" categories.

(e) The impugned order is also violative of Sections 32 and 33 of the persons with disabilities (Equal opportunities) protection of rights and full participation (Act 1995). The state Government and the Expert Committee had gone about identifying the posts but does not give reasons or rationale to exclude from the preview of posts in Group "A" like Deputy Collector, Commercial Tax Officer, Deputy Registrar Of Co-operative Societies, Assistant Director of Rural Development as these posts can be manned even by disabled persons.

(f) The Central Government has already directed all the departments and the Ministries to extend reservations to all physically handicapped identified persons identified in "A" and "B" post filled through direct recruits and the said order was issued by the Central Government way back on 22.2.1988. It is also respectfully submitted that the union of India has already created a quota for disabled persons in all Group "A" Services like I.A.S., I.R.S., Indian Audit & Accounts Service, Indian Revenue Services (I.T), Indian Railway Accounts Service and other such services. The disabled persons were also permitted to complete in that quota for the examinations held.

(g) In an identical matter, this Court in W.P.No.19301 of 2008, dated 14.08.2008, has issued an interim direction and permit the disabled person (the petitioner therein) to write the main examination including grant of hall ticket for writing the said examination.

(h) If the Government had identified the other posts in "A" services even prior to the recruitment for vacancies in the year 2006-2007 in Group I services, the petitioner would have qualified in the disabled category. The union of India has issued orders to extend the benefit for reservation for disabled in Group "A" services way back in the year 1988. The petitioner has already passed the main examination for the recruitment of services in Group I for the year 2006-2007. It is also stated that in other categories the number of vacancies are higher compared to the posts of District Employment Officer and the District Registrar and there was no reservation for the aforesaid category of Service for the recruitment from the year 2006-2007. In the mean while, the 2nd respondent proposed to conduct the Oral Test (Interview) on 26.12.2008 and 03.01.2009."

8. The Secretary, Social Welfare & Nutritious Meal Programme Department, Secretariat, Fort St. George, Chennai 600 009, 1st respondent herein, has filed a counter affidavit, stating that the Government in G.O.Ms.602, Social Welfare Department, dated 14.08.1981, orders were issued that 3% of the vacancies/ seats shall be reserved in all State Public Services/Educational Institutions under all kinds of Managements (like Government, Local Bodies and Aided Managements) including Universities, where the rule of reservation is applicable for the Schedule Caste/Scheduled Tribes and Backward Classes.

Thereafter, in G.O.(Ms) No.2093, Social Welfare Department, dated 30.10.1987, orders were issued that the reservation of 3% vacancies for Differently Abled Persons should be made applicable in respect of 'C' and 'D' categories. In so far as Executive posts are concerned, the individuals are asked to produce a certificate of physical fitness from the Medical Board to the effect that their handicap will not affect the performance of the job to which, he / she has been selected before appointment. In G.O.(Ms)No.99, Personnel and Administrative Reforms Department, dated 26.02.1988, orders were issued reserving 3% vacancies (1% to Blind, 1% to Deaf and 1% to Ortho) for Differently Abled Person for the purpose of employment to all the posts, including those coming under the purview of Tamil Public Service Commission.

9. The 1st respondent has further submitted that the Government of Tamil Nadu is following a roster system, wherein certain turns have been earmarked for different category of Differently Abled Persons. In G.O.(Ms) No.200, Social Welfare and Nutritious Meal Programme Department, dated 26.12.2006, orders were issued to carry forward the vacancies earmarked for Differently Abled persons which were not filled up due to non-availability of Differently Abled Persons in the recruitment year for a period of 3 years. Under section 32 of Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (Central Act No.1 of 1996), appropriate Government shall:-

(a) identify posts in the establishments which can be reserved for the persons with disability;

(b) at periodical intervals not exceeding three years, review the list of posts identified and up-date the list taking into consideration the developments in technology.

10. The 1st respondent has further submitted that the Government in G.O.(Ms) No.53, Social Welfare and Nutritious Meal Programme (S.WA) Department, dated 11.04.2005, orders were issued by identifying 117 posts suitable for Differently Abled Persons in Group 'A' and 'B' categories. The identification of posts under Group 'A' and 'B' Categories have been arrived after a long deliberation with various Heads of Department and Administrative Departments of Secretariat. There is no locus standi to say that G.O.(Ms)No.53, Social Welfare and Nutritious Meal Programme Department, dated 11.04.2005 is not reasonable.

11. The Government in G.O.(Ms) No.25, Welfare of Differently Abled Persons Department, dated 14.03.2013, issued orders, identifying in addition of 170 posts in Group 'A' and

'B' categories of posts suitable for Differently Abled Persons. An Expert Committee Meeting for the identification of the posts which are suitable to the Differently Abled Persons in Group 'A', 'B', 'C' and 'D' categories on par with Government of India for the Differently Abled Persons in Government Departments and other Government Agencies chaired by the Principal Secretary, Welfare of Differently Abled Persons Department was held on 20.07.2015. All Department / Head of the Departments / Boards / Public Sector Undertakings / Universities / Corporations has been requested to identify 'A' & 'B' categories of posts suitable for Differently Abled Persons on par with Government of India. Labour and Employment Department has been requested to identify suitable Skill Training Programme for the Differently Abled Persons at the District and State level. All Recruiting Agencies have been requested to ensure to select the suitable Differently Abled Persons based on their merit in the recruitment in the General Turn also so as to enable them to get more opportunities except 3% reservation. Appointment of Nodal Officer in all Departments has been requested for monitoring 3% reservation in employment for the Differently Abled Person,

12. The first respondent has further submitted that the Principal Secretary to Government, Welfare of Differently Abled Persons Department has complied with all mandatory provisions of law and followed the guidelines and directions issued by the Apex court while declaring the posts identified for various categories of Differently Abled Persons in Groups 'A' and 'B' posts. In G.O. (Ms) No.5, Welfare of Differently Abled Persons Department, dated 29.01.2013, orders were issued, directing all the Government Agencies, Boards, Universities to reserve 3% of vacancies for employment for differently abled person and requested to monitor the same by constituting a Committee among themselves. Thereafter, in G.O. (Ms) No.1, Welfare of Differently Abled Persons Department dated 02.01.2012, orders were issued for constitution of a High Level Committee Meeting under the Chairmanship of Chief Secretary to Government for monitoring the implementation of 3% reservation for Differently Abled Persons in all Government Departments. The latest meeting was conducted on 22.07.2015.

13. The 1st respondent has further submitted that various steps have been taken by the State Government towards filling up of 3% reservation which include Monitoring the process of filling vacancies by the Chief Secretary through High Level Committee, State Government's instructions to carry forward the vacancies earmarked for Differently Abled Persons. Now, the posts, like Deputy Collector, Commercial Tax Officer, Deputy Registrar of Co-operative Societies and Assistant Director of Rural Development are available for Differently Abled Persons.

Heard the learned counsel appearing for the parties and perused the materials available on record.

14. Apart from the counter affidavit, a status-report has been filed by the 1st respondent that the Government have taken all positive steps towards creating employment opportunities, to the Differently Abled, in order to ameliorate the grievances of the Differently Abled, in the matter of implementation of statutory provisions. Since the enactment of the provisions relating to the Persons with Disabilities and Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (Central Act No.1 of 1996), the State Government have taken various positive steps to implement the provisions contained in the Act, in letter and spirit and would improve the Socio-Economic conditions of the Differently Abled and facilitate their comprehensive development in all spheres of their life.

15. The Government in G.O.(Ms) No.10, Welfare of Differently Abled Persons Department, dated 04.03.2014, have identified 1928 number of backlog vacancies to be filled up for Differently Abled Persons, under 3% reservation from various Departments for the year 2006-2007 to 2011-2012. Out of 1928 backlog vacancies, 1183 vacancies have been filled up so far. At the time of filing status report, remaining 745 vacancies are yet to be filled up.

16. With regard to Higher Education Department, out of 91 vacancies, 35 vacancies would be filled by TNPSC and TRB and the remaining vacancies have to be filled by the Universities, but the recruitments could not be done due to some litigation and the issue will be sorted out at the earliest. In respect of School Education Department, out of 1107 vacancies, 1091 vacancies have already been filled up and remaining 16 vacancies of special teachers would be filled up shortly.

17. In respect of Medical Recruitment Board, out of 79 vacancies, 18 eligible candidates have been recruited so far and the remaining vacancies have not been filled up, since suitable qualified candidates among the differently abled category are not available and Medical Recruitment Board has been requested to fill up these posts. With regard to Social Welfare & Nutritious Meal Programme Department, out of 259 vacancies so far 17 vacancies have been filled up. Balance 242 vacancies are held up due to the litigation and same would be filled up after the litigation. However, no action was done by the Energy Department. However, the said Department has promised to take action by conducting Special Drive and complete the task soon.

18. As far as Animal Husbandry, Dairying and Fisheries Department is concerned, the Department has notified 57 vacancies in "B" category and applications have also been received and it would be filled up shortly. In Highways and Minor Ports Department, 4 vacancies to be filled up. During the selection process, one of the candidates filed a case before the Madurai Bench of this Court and the Department is pursuing the court case and recruitment process would be completed soon.

19. Out of 140 vacancies in Municipal Administration and Water Supply Department, 3 vacancies have been filled up and the remaining vacancies would be filled shortly by Corporation of Chennai. With regard to Adi Dravidar and Tribal Welfare Department, out of 171 vacancies, 19 vacancies have been filled up and the remaining 152 vacancies are to be filled up, through various recruiting agencies.

20. In G.O.(Ms) No.1, Welfare of Differently Abled Persons Department, dated 02.01.2012, the Government have issued orders for constitution of a High Level Committee Meeting under the Chairmanship of Chief Secretary to Government with the Secretaries of various departments as members for monitoring the implementation of 3% reservation for Differently Abled Persons in all Government Departments. Meetings are periodically conducted and the Chief Secretary has instructed the concerned departments to take immediate follow up action to fill up all the backlog vacancies.

21. In the status report, submitted on behalf of the respondents, it is stated that a Review Meeting was conducted under the Chairmanship of Hon'ble Minister for Social Welfare and Nutritious Noon Meal Programme on implementation of 3% reservation for Differently Abled Persons on 08.06.2016. The Hon'ble Minister for Social Welfare and Nutritious Noon Meal Programme insisted that 3% reservation for Differently Abled Persons in Government jobs should be strictly ensured, according to the guidelines issued by the Hon'ble Supreme Court. Further instructions have been given to all the Departments to appoint Nodal officers and Monitoring Committees, to follow up the implementation of 3% reservation to Differently Abled Persons and also to fillup backlog vacancies.

22. That apart, it is stated in the status report that various steps have been taken by the State Government towards filling up backlog vacancies by differently abled persons, which includes monitoring the process of filling vacancies by the Chief Secretary, through High Level Committee. Government have stated that all positive steps towards creating employment opportunities to the differently abled, in order to ameliorate the grievances of the differently abled, in the matter of

implementation of the statutory provisions, is being taken.

23. Writ petition has been filed in the year 2008, with the following prayer,

"Petition under Article 226 of the Constitution of India, praying for a Writ of Certiorarified Mandamus, to call for the records in pursuant to impugned notification in Advertisement No.120, dated 01.08.2007, issued by the Secretary, Tamil Nadu Public Service Commission, Chennai, 2nd respondent herein, and quash the same, insofar as not granting 3% reservation for the disabled persons, as per the persons with Disabilities and Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 and consequently, direct the 2nd respondent herein, to recommend the petitioner to the post of Deputy Collector and other posts as per the disabled reservation category."

24. After 8 years, vide made in W.M.P.No.16901 of 2016 in W.P.No.29981 of 2008, dated 12.07.2016, the prayer has been amended, as hereunder:

"Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of Certiorarified Mandamus, to call for entire records in pursuant to impugned notification in Advertisement No.120, dated 01.08.2007, issued by the 2nd respondent and quash the same, insofar as not granting 3% reservation for the disabled persons, as per the Persons with Disabilities and Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 and consequently, direct the 2nd respondent to recommend the petitioner to the post of Deputy Collector and other posts as per the disabled reservation category."

25. Selection process has already been completed. Knowing fully well, the petitioner has participated in the selection. He has not challenged the notification in 2008, when the posts were notified for the differently abled persons. Having participated in the selection process and became unsuccessful, he cannot challenge the notification at this stage and that too, after eight years. Useful reference can be made to few decisions,

(i) In *Madanlal v. State of J & K* reported in AIR 1995 SC 1088, the unsuccessful candidates challenged the process of selection of the District Munsifs in the State of Jammu and Kashmir undertaken by the Jammu and Kashmir Public Service Commission on the ground, inter alia that they fared well in the written examination and they were not selected. Besides, they also alleged bias and mala fide in the process of assessment. The Supreme Court rejected the above contentions and while dealing the locus of the unsuccessful candidates, who had acquiesced themselves to the selection process, at paragraph 8 to 10 and 17 held as follows:

"8. 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.

9. 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, that 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 Selection Committee was not properly constituted. In the case of *Om Prakash Shukla v. Akhilesh Kumar Shukla* reported in [1986] 1 SCR 855, 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. Therefore, the result of the interview test on merits cannot be successfully challenged by a candidate who takes a chance to get selected at the said interview and who ultimately finds himself to be unsuccessful. It is also to be kept in view that in this petition we cannot sit as a Court of appeal and try to re-assess the relative merit of the concerned candidates who had been assessed at the oral interview nor can the petitioners successfully urge before us that they were given less marks though their performance was better. It is for the Interview Committee which amongst others consisted of a sitting High Court Judge to judge the relative merits of the candidates who were orally interviewed in the light of the guidelines laid down by the relevant rules governing such interviews. Therefore, the assessment on merits as made by such an expert committee cannot be brought in challenge only on the ground that the assessment was not proper or justified as that would be the function of an appellate body and we are certainly not acting as a court of appeal over the assessment made by such an expert committee.

17.Merely on the basis of petitioners' apprehension or suspicion that they were deliberately given less marks, at the oral interview as compared to the rival candidates, it cannot be said that the process of assessment was vitiated. This contention is in the realm of mere suspicion having no factual basis. It has to be kept in view that there is not even a whisper in the petition about any personal bias of the members of the interview committee against the petitioners. They have also not alleged any mala fides on the part of the interview committee in this connection. Consequently, the attack on assessment of the merits of the petitioners cannot be countenanced. It remains in the exclusive domain of the expert committee to decide whether more marks should be assigned to

the petitioners or to the concerned respondents. It cannot be the subject matter of an attack before us as we are not sitting as a court of appeal over the assessment made by the committee so far as the candidates interviewed by them are concerned."

(ii) In *University of Cochin v. N.S.Kanjoonjamma & Others* reported in 1997 (4) SCC 426, the Supreme Court, at Paragraph 4, held as follows:

"Having participated in the selection, she is estopped to challenge the correctness of the procedure. That apart, we have already held that procedure was correctly followed and therefore, the omission to mention in the advertisement that it was a special recruitment is of no consequence."

(iii) In *Union of India v. N.Chandrasekharan* reported in 1998 (3) SCC 694, selection to the post of Assistant Purchase officer, was challenged. The unsuccessful candidates have challenged the process of selection. The Tribunal quashed the promotions. While allowing the appeals preferred by the Union of India, the Supreme Court, at Paragraph 13, held as follows:

"It is not in dispute that all the candidates were made aware of the procedure for promotion before they sat for the written test and before they appeared before the Departmental Promotion Committee. Therefore, they cannot turn around and contend later when they found they were not selected, by challenging that procedure and contending that the marks prescribed for interview and confidential reports are disproportionately high and that the authorities cannot fix a minimum to be secured either at interview or in the assessment on confidential report."

(iv) The Hon'ble Supreme Court in *Sadananda Halo v. Momtaz Ali Sheikh* reported in 2008 (4) SCC 619, at Paragraph 35, held that unsuccessful candidates cannot turn back and assail the selection process, except in certain cases, where exceptions have been carved out by the Supreme Court.

26. In view of the above, this Court is not inclined to pass any orders, in this writ petition. Hence, the Writ Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is also closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

skm

To

1. The Secretary,
Social Welfare & Nutritious Meal
Programme Department,
Secretariat, Fort St. George,
Chennai 600 009.
2. The Secretary,
Tamil Nadu Public Service Commission,
Omandurar Government Estate,
Chennai 600 002.

+1cc to M/S.T.Sundaravadanam, Advocate, S.R.No.3844

W.P.No.29981 of 2008

SKV(CO)
CS/15/02/2019

सत्यमेव जयते

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