

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

CWP No.15528 of 2012 (O&M)

Date of decision: 01.10.2018

Bharpur Singh

...Petitioner(s)

Versus

Punjab State Agricultural Marketing Board and others

...Respondent(s)

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Mr. Harsh Aggarwal, Advocate for the petitioner(s).

Mr. K.S. Sidhu, Sr. Advocate with
Mr. Dushyant Sarvesh, Advocate
for respondent Nos. 1 to 4.

None for respondent No.5.

Mr. G.S. Bal, Sr. Advocate with
Ms. Gursimran Kaur, Advocate for respondent No.6.

Jitendra Chauhan, J. (Oral)

The petitioner seeks quashing of resolution No.1647 dated 30.07.2012 (Annexure P-7) whereby respondent No.6 was appointed as Sewadar by respondent No.5.

The petitioner had been working as Sewadar on contractual basis with respondent No.3 w.e.f. 01.08.2009. Meanwhile, an advertisement was issued in the month of September 2011 for filling up two posts of Sewadar, out of which one post was for general category whereas the other post was for the reserved category. The petitioner being eligible applied for the post against general category. He was called for interview, however, the said proceedings were dropped by respondent

No.5, vide order dated 25.11.2011 which were approved by respondent No.3 vide resolution dated 15.02.2012 (Annexure P-4). The above said posts were readvertised in May, 2012; the petitioner again applied against the said post, however, he was not selected.

It is asserted that the petitioner possesses post graduation degree and is having more than three years experience, however, the respondents in a partial manner, have selected one Satnam Singh and respondent No.6 who though a graduate but did not have any work experience.

On the other hand, learned senior counsel for respondent Nos. 1 to 4 as well as learned senior counsel for respondent No.6 state that proper procedure had been followed in case of all the candidates who had appeared for interview. The selection had been made by the Selection Committee which had been constituted under the Services Rules and is an independent body. The petitioner who appeared for interview and remained unsuccessful has now agitated the selection. Learned counsel further submit that admittedly the petitioner possessed post graduate qualification but after assessing the interview numbers, the selection has been made on the basis of communication ability, suitability etc., of the candidates. In support of assertion, learned counsel cite **Dhananjay Malik and others** Vs. **State of Uttaranchal and others**, AIR 2008 SC 1913 and **Dalpat Abhasaheb Solunke and others** Vs. **Dr. B.S. Mahajan and others**, AIR 1990 SC 434.

Heard.

In the instant case, the recruitment in question was made under the Punjab Market Committees (Clas-IV) Service Rules, 1989. The petitioner after having appeared in the selection process for the post of Sewadar has challenged the selection by alleging that same was carried out in a biased and partial manner at the behest of respondent No.5, the Chairman of Market Committee Dakala, District Patiala. However, learned counsel for the petitioner has failed to point out as to how the selection was unfair and how the proper criteria was not followed. In fact, earlier when the posts were advertised, the proceedings were dropped vide order dated 25.11.2011 against which the petitioner also appeared and was called for interview. Thereafter, the posts were re-advertised but the petitioner has not challenged the action of respondents while dropping the proceedings and again he appeared against the re-advertised post wherein he was not found suitable and respondent No.6 was selected. The petitioner is estopped and precluded from questioning the selection process once he has participated in the same without any demur.

In Dhananjay Malik's case (supra), it was held as under:-

“7. It is not disputed that the writ petitioners- respondents herein participated in the process of selection knowing fully well that the educational qualification was clearly indicated in the advertisement itself as B.P.E. or graduate with diploma in physical education. Having unsuccessfully participated in the process of selection without any demur they are estopped from challenging the selection criterion inter alia that the advertisement and selection with regard to requisite educational qualifications were contrary to the Rules.

8. In Madan Lal vs. State of J & K, (1995) 3 SCC 486, this Court pointed out that when the petitioners appeared at the oral interview conducted by the Members concerned of the Commission who interviewed the petitioners as well as the contesting respondents concerned, the petitioners took a chance

to get themselves selected at the said oral interview. Therefore, 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 writ petitions. This Court further pointed out 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 present case, as already pointed out, the writ petitioners-respondents herein participated in the selection process without any demur; they are estopped from complaining that the selection process was not in accordance with the Rules. If they think that the advertisement and selection process were not in accordance with the Rules they could have challenged the advertisement and selection process without participating in the selection process. This has not been done.

9. In a recent judgment in the case of [Marripati Nagaraja vs. The Government of Andhra Pradesh](#), (2007) 11 SCR 506 at p.516 SCR this Court has succinctly held that the appellants had appeared at the examination without any demur. They did not question the validity of fixing the said date before the appropriate authority. They are, therefore, estopped and precluded from questioning the selection process.”

The instant case is squarely covered by the ratio of law laid down in Dhananjay Malik's case (supra). Keeping in view the above, the present is devoid of merit and the same is hereby dismissed.

01.10.2018

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(JITENDRA CHAUHAN)
JUDGE

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No