

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

CWP-18773-2013

Date of decision: 31.8.2018

Gaurav Kumar and another

...Petitioners

Versus

Director, Sainik Welfare Punjab and others

...Respondents

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Mr.Lalit Kumar Sharma, Advocate for
Mr.SK Sharma, Advocate for the petitioners

Mr.Madhav Pokhrel, Advocate for the respondents

JITENDRA CHAUHAN, J.

The present writ petition under Articles 226/227 of the Constitution of India has been filed for directing the respondents to declare the appointment of respondent Nos. 4 and 5 as illegal and directing respondent No.2 to allow the petitioners to continue prior to their removal.

It is contended that petitioner No.1 joined the service under respondent No.2 in the month of July, 2011 as Mali, whereas petitioner No.2, joined the service as Sweeper in the month of November, 2010 in the Sainik Rest House, Hoshiarpur. After one year of service, their salaries were increased from Rs.3554/- per month to Rs.4016/- per month. Their salaries were further increased every year. But in the month of May, 2013, they were removed from service without any prior notice and deployed respondent Nos. 4 and 5 in their place, after ignoring the fact that petitioner No.1 is a dependent of Ex-serviceman and having more than two years of experience.

On the other hand, learned counsel for the respondents submits that respondent Nos. 4 and 5 have been appointed by respondent Nos. 1 to 3 after adopting proper procedure and are fully eligible to hold their respective posts.

Heard.

Vide Annexure R-3/6 dated 23.7.2013, a notice was pasted on the notice board at District Sainik Board, Hoshiarpur for the appointment of one Sweeper and one Mali on contract basis in the Sainik Rest House, Hoshiarpur and a selection committee was constituted to conduct the selection process. Against the post of Mali only three candidates appeared for the interview including petitioner No.1 and respondent No.4, who is handicapped and ward of Late. Havl. Sh. Kuldeep Singh was appointed, whereas against the post of Sweeper, petitioner No.2, who was not a dependent of ex-serviceman, had also appeared for interview, respondent No.5, who is ex-serviceman, was selected. Neither any appointment letters were issued to the petitioners by the department nor any document showing their presence at the working place has been placed on the file and appears to have been given duties without following proper procedure. Moreover, after participation and having been found not suitable, they cannot turn round and contend that the process of interview was unfair.

Hon'ble the Supreme Court has observed in para Nos. 9 and 10 in **Madan Lal and others vs. State of Jammu and Kashmir 1995(3) SCC 486** held 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 concerned respondents herein, were all found eligible in the light of marks obtained in the written test, to be eligible to be called for oral interview. Upto this stage there is no dispute between the parties. The petitioners also appeared at the oral interview conducted by the concerned Members of the Commission who interviewed the petitioners as well as the concerned contesting respondents. 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 and Ors., (AIR 1986 SC 1043)**, 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 reassess the relevant merits 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.”

In view of the above, the appointment of respondent Nos. 4 and 5 cannot be said to be illegal. Consequently, the present writ petition being bereft of merit is dismissed.

30.8.2018
gsv

(JITENDRA CHAUHAN)
JUDGE

Whether speaking / reasoned?

Yes / No

Whether reportable?

Yes / No