

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-9623 of 2013

Date of decision: 24.09.2019

Anil Kumar

.... Petitioner

versus

State of Haryana and others

.... Respondents

CORAM:HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Rahul Sharma-I, Advocate
for the petitioner.

Mr. C.S. Bakhshi, Addl. A.G. Haryana.

Mr. Namit Kumar, Advocate
for respondents No.3 to 5.

Mr. R.K. Malik, Senior Advocate with
Mr. Digvijay Singh, Advocate
for respondents No. 6 to 9.

HARSIMRAN SINGH SETHI, J. .

In the present writ petition, the challenge is to the notification dated 12.01.2012 (Annexure P-7), wherein, the result of the candidates, who have been declared successful to be appointed on the post of Shift Attendant in pursuance to the advertisement no.4/2008 published on 08.07.2008 (Annexure P/3) wherein, petitioner could not make it to the list of selected candidates. Further prayer of the petitioner is to reserve proportionate posts of Shift Attendants to be filled up in the category of physically handicapped by giving reservation to the members of the reserved categories.

The facts as stated in the writ petition are that the respondents issued

advertisement on 08.07.2008 (Annexure P/3), by which 304 posts of Shift Attendants were advertised by Haryana Staff Selection Commission. Out of the total 304 posts, 27 posts were reserved for physically handicapped and out of those 27 posts, 14 posts were earmarked for orthopaedically handicapped and 12 posts reserved for partially deaf and dumb and one post was reserved for blind/low vision. Petitioner participated for recruitment to the post of Shift Attendant against 14 posts, which were earmarked for orthopaedically handicapped as the petitioner is 70% orthopaedically handicap. Petitioner competed, but was unsuccessful to be selected against 14 posts, which were earmarked for orthopaedically handicapped persons.

After being unsuccessful, the petitioner approached this Court by filing CWP No.11645 of 2012, challenging the select list in respect of 14 posts to be filled up from physically handicapped category reserved for orthopaedically handicapped candidates. Said writ petition was dismissed by this Court vide order dated 02.11.2012, which order was challenged by the petitioner by filing LPA No.2157 of 2012. The division Bench of this Court vide order dated 08.02.2013 allowed the petitioner to withdraw the writ petition and gave him liberty to file a fresh one on the same cause of action. The order passed by the Division Bench is as under:-

Learned counsel for the State fairly states that though there may be some substance in the legal issue raised by the appellant in this appeal, he points out that neither the departments on whose requisition the posts were advertised were made parties by the appellant in the writ petition nor the appellant impleaded those who had been selected and whose selection the appellant wanted to be quashed.

Faced with this difficulty, learned counsel for the appellants submits that he be allowed to withdraw the writ petition with liberty to file fresh petition curing the aforesaid

formal difficulties.

Having regard to the nature of issues involved and fact that the appellant is struggling for his rights guaranteed to him under the provision of Persons with Disability (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, we permit the appellant to withdraw the writ petition No.11645 of 2012. Order qua in the said writ petition is set aside and the writ petition is dismissed as withdrawn. Liberty is given to the appellant to file fresh substantial petition.

In view of the above, present appeal is disposed of.

In pursuance to the liberty granted by the Division Bench, the present writ petition has been preferred by the petitioner claiming the same relief as being claimed in CWP No.11645 of 2012.

The claim of the petitioner in the present writ petition is that the respondents were under obligation to reserve posts for reserved category even for the category of the physically handicapped and also in the sub-categories, such as orthopaedically handicapped, partially blind/low vision and deaf and dumb. The prayer of the petitioner is that after reserving the post for the reserved category candidate in respect of the post advertised for physically handicapped categories as well, petitioner should have been considered against one such reserved post and be granted appointment. Counsel for the petitioner argues that the reservation has been treated as vertical reservation, whereas, there should have been horizontal reservation as well and posts should have been reserved for reserved category even in the category of physically handicapped (orthopaedically), for which 14 posts were advertised.

Upon notice of motion, the respondents have filed reply and have

defended the selection. In the reply, respondents have stated that the present recruitment has been made on the basis of instructions, which were applicable on the date, when the posts were advertised and on the said date the instructions dated 14.10.1997 were in operation and same were adhered to not only while advertising the posts but also while making recruitment list. The instructions dated 01.05.2012 (Annexure P/8) which are being relied by the petitioner, attached with the writ petition came into being after declaration of the result of the selected candidates, wherein, the petitioner was found unsuccessful, therefore, instructions dated 01.05.2012 which are being relied by the petitioner to canvass his point of view cannot be made retrospectively applicable upon the selection which had already taken place. Relevant paragraph of the reply is as under:-

“The respondent nos. 6 to 19 have gone through the writ petition filed by the petitioner and submitting short written statement with the liberty to file detailed written statement if need arise:-

1. That the petitioner has no case on merits.

In the above writ petition the claim of the petitioner is that 304 posts of Shift Attendants be filled up from handicapped category on horizontal reservation basis. It is necessary to mention here that the Haryana Government has granted the benefit of reservation to the handicapped category even before enforcement of The Persons with Disability (Equal Opportunities, Protection of Right & Full Participation) Act, 1995. Although the said Act only provides 3% reservation. The Section 33 of the above said Act is reproduced below for ready reference:-

33. Reservation of post-Every appropriate Government shall appoint in every establishment such percentage of vacancies not less than three percent for reasons or class of persons with disability of which one percent each shall be reserved for persons suffering from:

- (i) Blindness of low vision;
- (ii) hearing impairment
- (iii) Locomotor disability or cerebral palsy;

In the posts identified for each disability;

Provided that the appropriate Government may, having regard to the type of work carried on in any department or establishment , by notification subject to such conditions, if any, as may be specified in such notification, exempt any establishment from the provisions of this section”.

So in view of the above provisions of Section 33 of the above Act, there shall be reservation of 3% of handicapped categories, however, it is the discretion of the employer to reserve 3% for handicapped category vertically or horizontally . It is necessary to mention here that prior to coming into force of the above Act the 3% reservation for handicapped category in Haryana was horizontal but after coming into force of the above Act the Government of Haryana vide instructions dated 14.10.1997 has decided that reservation for Physically Handicapped Category will be vertical reservation. The copy of the instructions dated 14.10.1997 to this effect is attached as Annexure R-6/1. The said instructions dated 14.10.1997 were reiterated from time to time. The copy of the instructions dated 22.10.2007 to this effect is attached as Annexure R-6/2. The Government of Haryana first time taken a decision on 1.5.2012 wherein the reservation for handicapped category was converted from vertical to horizontal reservation. The copy of the instructions dated 1.5.2012 to this effect is already on record as Annexure P/8. It is necessary to mention here that 304 posts of Shift Attendants were advertised vide advertisement dated 8.7.2008. The copy of the advertisement already attached as Annexure P-3 and the process of selection already completed on 12.1.2012 and even all the answering respondents were appointed in the month of March 2012. So the instructions dated 1.5.2012 by which the reservation for handicapped category has been converted from vertical to horizontal

reservation has no application in the present case. So in the light of the above factual position the petitioner has no case to fill up 304 posts of Shift Attendants by way of horizontal reservation for handicapped category.

I have heard learned counsel for the parties and have gone through the record of the case with their able assistance.

The grievance which is being raised by the petitioner is that the respondents should have reserved the posts for the reserved category candidates, such as, scheduled caste, backward class etc., even while advertising 27 posts to be filled from physically handicap. Counsel for the petitioner argues that out of the total 27 posts reserved for physically handicapped, 14 posts given to the orthopaedically handicapped and the reservation for the reserved category of scheduled castes, backward class should have been proved therein also. It is undisputed that the petitioner participated in pursuance to the advertisement (Annexure P/3) and in the advertisement, the details of reservation in favour of reserved categories of Scheduled castes and backward class were duly mentioned therein. If the petitioner felt aggrieved against the non-reservation of posts for Scheduled castes and backward class against the post to be filled in the category of physically handicap as being demanded by him in the present writ petition, it was open for him to challenge the advertisement there and then. Rather, the petitioner, without raising any objection, participated in the selection process against the 14 posts reserved for physically handicapped and on being unsuccessful to make up to the select list, the petitioner approached this Court claiming that there should be reservation for scheduled castes and backward class within 14 posts also, which were reserved for

orthopaedically handicapped in the category of physically handicapped. In the absence of any challenge to the advertisement, no grievance can be raised by the petitioner as no post was reserved for scheduled caste candidates in the category of the physically handicap. The petitioner did not challenge the advertisement when he filed CWP No.11645 of 2012 and, thereafter, again when the present writ petition was filed in the year 2013. In the absence of any challenge to the advertisement, which advertisement is sacrosanct and cannot be deviated, no relief can be granted to the petitioner, hence, the claim of the petitioner in the absence of challenge to the advertisement cannot be accepted and is liable to be rejected.

A Co-ordinate Bench of this Court while deciding CWP No.5797 of 2016 titled as **Surender Kumar vs. State of Haryana and another** on 02.09.2016 has held that if an advertisement is sacrosanct, no request regarding the change can be entertained by anyone, which is contrary to the terms and conditions as stipulated in the advertisement. Relevant paragraph of the judgment is as under:-

“It is by now well settled that the conditions and terms contained in an advertisement by which a process of recruitment is initiated would be sacrosanct and cannot be deviated from. The petitioner had applied under the SCB category. It is true that such reservation on account of circumstances and developments already noticed has ceased to operate. The Commission, accordingly, issued a clarification that the candidates, who had claimed reservation under the SCB category would now be considered under the General Category and that too, with a rider that they have not availed any age relaxation. Such change of circumstances would not vest in the petitioner a right for change in category now and to claim consideration of candidature against the Economically Backward Persons (GC) category. Acceptance

of such a prayer would virtually amount to negating a specific condition imposed by the Commission while inviting applications that no request regarding any change in any category would be entertained. The rules of the game pertaining to a selection process cannot be changed midway.

Again, a Co-ordinate Bench of this Court while deciding CWP-3863 of 2013 titled as **Balwinder Kaur vs. State of Punjab and others** decided on 17.11.2017 has held that as the terms and conditions contained in public notice/advertisement are sacrosanct, the same cannot be relaxed or deviated. Relevant paragraph of the judgement is as under:-

“It is by now well settled that the terms and conditions contained in a public notice/advertisement are sacrosanct and the same cannot be relaxed or deviated from. If the petitioner's claim for validation of more than one year old B.C. Certificate is accepted, it would result to discriminatory consequences as there might be several other candidates who may have relied upon such expired certificates and have been denied benefit of reservation. Likewise, if the validity period of such like certificate is overlooked, it would be self destructive to the objectives of the reservation policy. A reference in this regard may be made to the judgement dated 18.8.2011, passed by this Court in CWP No.9859 of 2009 (Sukhjot Kaur Vs. State of Punjab and others)”.

Therefore, the claim of the petitioner, if accepted will amount to change in the terms and conditions as stipulated in the advertisement, which conditions have not been challenged by the petitioner, hence the relief, which is being prayed by the petitioner in the writ petition is contrary to the terms and conditions of the advertisement and hence cannot be granted at this stage, especially, in the absence of any challenge to the advertisement.

Further argument is that as per the instructions dated 01.05.2012 (Annexure P/8), there should have been horizontal reservation and, therefore, respondents were bound to reserve posts for reserved category of

scheduled caste and backward class even against 14 posts reserved for orthopaedically handicapped category of physically handicapped. Counsel for the petitioner argues that though the instructions might have issued on 1.5.2012 but keeping in view Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, the petitioner is entitled for the reservation as being claimed and therefore the claim of the petitioner for reserving the post for the scheduled caste candidates i.e. two out of the 14 posts, for the physically handicapped is in accordance with law.

Once this Court has held that the petitioner never challenged the advertisement and petitioner participated in the selection process without raising any objection, no grievance can be made by him. If the petitioner claims any right under 1995 Act, he should have challenged the advertisement at the initial stage itself rather than participating in the selection process without raising any objection. In the absence of any objection raised qua reservation for scheduled caste candidates against post reserved for handicap candidates after declaration of result, the petitioner cannot claim the same as a matter of right. Once the selection is over, the grievance in respect of the said selection cannot be raised that posts for scheduled caste were not reserved, especially, when conditions of the recruitment were duly notified by the respondents. Under these circumstances, at this stage, the petitioner cannot be granted any relief qua reservation of posts as being claimed by him.

As per the settled principle of law, if a candidate has participated in the selection process but fails to secure a seat/post, he cannot turn around

and challenge the selection process. Hon'ble Supreme Court of India while deciding Civil Appeal No.299 of 1985 titled as **Om Parkash Shukla vs. Akhilesh Kumar Shukla and others** decided on 18.03.1986 has held that a candidate cannot be granted any relief in case he appears for the selection without any protest and files a petition only when he realises that he will not be able to succeed in the said selection. Relevant paragraph of the judgement is as under:-

“Moreover, this is a case where the petitioner in the writ petition should not have been granted any relief. He had appeared for the examination without protest. He filed the petition only after he had perhaps realised that he would not succeed in the examination. The High Court itself has observed that the setting aside of the results of examinations held in the other districts would cause hardship to the candidates who had appeared there. The same yardstick should have been applied to the candidates in the District of Kanpur also. They were not responsible for the conduct of the examination.”

Once again Hon'ble Supreme Court of India, while deciding Writ Petition (Civil) No.546 of 1994 titled as **Madan Lal and others vs. State of Jammu and Kashmir** decided on 06.02.1995 held that in case, a candidate takes a calculated chance and participate in the selection process, he cannot turn around and challenge the process on the ground that the same is unfair, in case he does not make a mark to come within a merit. Relevant paragraph of the judgement is as under:-

“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 the present writ petition, the petitioner took the calculated chance and participated in the selection process in pursuance to the terms and conditions specified in the advertisement and after being unsuccessful, he is claiming benefit of reservation by praying for changing the terms and conditions of the advertisement, which cannot be permitted.

A Division Bench of this Court while deciding LPA No.111 of 2007 titled as Ajay Kumar Verma Vs. State of Haryana and others decided on 07.08.2009 held that in case validity of the rules is not challenged before appearing in the selection process, the same cannot be challenged at a belated stage after the process is over. Relevant paragraph of the judgment is as under:-

“We have given careful consideration to the submissions made by the learned counsel and perused the record. It is common ground that the appellant in LPA No.111 of 2007 and the petitioners in the connected writ petitions were all candidates for appointment against the posts that were advertised and had appeared in the competitive examination held in accordance with the rules governing such selection and appointments. What to speak of mounting a challenge in proper proceeding before a competent court against the recruitment Rules, the petitioners did not make any murmur, lodge any protest or objection to the validity of the same before appearing in the competitive examination. There is no explanation much less a cogent one forthcoming for their silence in this regard. This implies that the petitioners were satisfied with the stipulation of the conditions of eligibility not only for appearing in the competitive examination but also with the condition of eligibility stipulated for being invited for viva voce and for appointment as members of the

Service. It also implies that the challenge to the validity of the rules comes belatedly after the petitioners had realized that they did not qualify for being appointed or for being invited for interview. Such being the case we find it difficult to entertain a challenge to the Rules after the game has been played according to the Rules published and made known before hand.”

In the present writ petition, the petitioner participated in the selection process without raising any objection and it is only after he was not successful to be selected in a category of physically handicap, he has challenged the selection on the ground that no reservation was provided and that the reservation for the reserved categories of scheduled caste and backward class should have also be provided in the category of physically handicap which is not at all permissible.

Keeping in view the above, no ground for interference is made out.

Dismissed.

(HARSIMRAN SINGH SETHI)
JUDGE

24.09.2019

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| 1. | Whether speaking/non-speaking? | Yes/No |
| 2. | Whether reportable? | Yes/No |