

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

CWP No.7437 of 2018 (O&M)

Date of Decision.08.11.2019

Dr. Naresh Rathee

...Petitioner

Vs

State of Haryana and others

...Respondents

Present: Mr. S.K. Nehra, Advocate
for the petitioner.

Mr. Harish Nain, AAG, Haryana.

Mr. Padamkant Dwivedi, Advocate for
Mr. Deepak Balyan, Advocate
for respondents No.3 and 4.

Mr. Bikramjit Singh Patwalia, Advocate
for respondents No.5 to 7.

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

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AMIT RAWAL J.

Petitioner has sought indulgence of this Court under Article 226/227 of the Constitution of India for quashing of action of respondents No.3 and 4, All India Jaat Heroes Memorial College, Rohtak, Haryana in initiating the process for appointment to the post of Principal.

The petitioner, as per averments in the writ petition, is M.A., M.Phil, Ph.D (English) and working as Associate Professor of English in Chhotu Ram Arya College, Sonapat.

To demonstrate the erroneous action of the Administrator in appointing the Principal through backdoor entry, Mr. Sunil K. Nehra, learned counsel appearing on behalf of the petitioner submits that Government vide Instructions dated 23.02.2018 (Annexure P-1) informed all the Principals of Government Aided Colleges in the State of Haryana to

cause advertisement for inviting applications for filling up non-teaching post. However, no such advertisement was caused for filling up post of Principal. The petitioner obtained information under RTI and vide information dated 12.04.2018 was informed that applications were sold and the amount so collected in the office of Administrator through receipt book was sent to the office of Principal from the office of Administrator and received on 08.03.2018 under diary No.448/2018. He also relied upon instructions of Higher Education Commissioner issued to all Principals of Government Aided Private Colleges in Haryana dated 01.07.2009 whereby it was informed that various irregularities were conducted in the interview process and the Managing Committee of the College should be alive while conducting interviews. In case tenure of the management expires, no interview should be conducted till the constitution of new management.

Specific allegation of mala fide in paragraph 16 and 17 of the writ petition against respondent No.4 having been attributed by demonstrating that respondent No.4 being a HCS Officer is made to hold charge of Administrator of the Jaat Education Society and about to retire on 31.03.2018 when he intentionally fixed the interview on 26.03.2018. Aforementioned process was initiated without adherence to Instructions (Annexure P-1) nor any advertisement was issued or any information uploaded on the website. Administrator could have waited for appointment of the regular committee or new management of the society but not in the manner and mode as aforementioned. Even photography of selection process was not done.

The aforementioned stand of the petitioner has been opposed through Mr. Deepak Balyan, learned counsel appearing for respondents

No.3 and 4 raising objection qua maintainability and locus standi of the petitioner. As far as applicability of instructions, it was stated that same applied to non-teaching staff only. There was a misrepresentation to this Court, as the post was advertised and published in two daily national newspapers on 19.01.2018 i.e. Indian Express (English Edition) and Rashtriya Sahara (Hindi Edition), both of them having wide circulation.

Institute has pioneered in the service of the society as one of the most reputed institution in North India, which has 17 (seventeen) departments including Physics, Chemistry, Zoology, Botany, Commerce, Mass Communication and also provision of hostel facilities for boys and girls with modern facilities. On expiry of term of office bearers of the society/management and due to pendency of the court case regarding election of the Jaat Education Society, Government appointed Sh. D.K. Behra, IAS, Deputy Commissioner, Rohtak as Administrator from 20.07.2015 to 09.03.2016. On transfer of Sh. D.K. Behra, Sh. Atul Kumar, IAS, Deputy Commissioner, Rohtak was appointed as Administrator from 10.03.2016 to 16.11.2016 whereas respondent No.4 was appointed as Administrator on 16.11.2016 till 31.03.2018. One Dr. S.K. Malik working as a regular Principal retired on 31.01.2017 and after that one Dr. Amita Khokhar was appointed as Principal being senior most Lecturer on ad hoc basis, who retired on 31.08.2017. Thereafter, one Dr. Geeta Suhag on similar basis was appointed as Principal but she also retired on 31.10.2017. After that Dr. Sangeeta Dalal was appointed as Principal on ad hoc basis. The process of appointment on post of Principal on regular basis was initiated on 23.10.2017 for smooth functioning in an efficient manner for academic session w.e.f. April 2018. Respondent No.3 sought permission

from Director General, Higher Education on 23.10.2017 (Annexure R-1) for filling up the post. Director General, Higher Education vide communication dated 29.11.2017 (Annexure R-2) granted the permission. It is thereafter the advertisement (Annexure R-3 and R-4) was caused.

Even the process, as per University guidelines and UGC Guidelines was duly scrutinized by associating M.D. University and Director General, Higher Education nominee along with the subject experts. University and the Director General, Higher Education, Government of Haryana in pursuance of request received from the college, appointed Dr. Kuldeep Singh Chikkara, Professor, Department of Commerce and Dr. J.N. Sharma, Principal, G.V. Degree College, Rohtak as University nominee whereas government appointed Sh. Randhir Singh, Principal, Government College, Bhuna (Fatehabad) as nominee of Director General, Higher Education for the selection process.

Petitioner is only an aspirant with unending hope as notice of motion order reveals that he had no intention to apply. Selection committee conducted selection process fairly and faithfully. It was based on rule and evaluation of marks. The criteria followed is Annexure P-8 and proceeding of the interview as Annexure P-9.

On the other hand, Mr. Bikramjit Singh Patwalia, learned counsel appearing for applicants through Civil Misc. Application No.12086 of 2017 sought impleadment of three respondents, who participated in the selection process and awaiting declaration of result and attempted to highlight the misrepresentation and concealment qua advertisement and other material, which has already been detailed in the written statement filed on behalf of respondents No.3 and 4. In support of contention, relied upon

judgment of Hon'ble Supreme Court in **Srikant Prasad Srivastava and others Vs. Abdus Samad and others 1999 SCC (L&S) 1072** to contend that where petitioner had not appeared for interview nor applied as candidate, would not have any occasion to contest result of interview proceedings. Similarly **Madan Lal and others Vs. State of Jammu & Kashmir 1995(2) SCT 880** where a candidate takes a calculated chance and appear in interview but when result is not palatable to him, cannot volte face and subsequently challenge the process of interview rather would be estopped by applying doctrine of estoppel. On similar lines, **D. Sarojakumari Vs. R. Helen Thilakom and others 2017 (4) SCT 494.**

Both the counsels represented that allegation of not conducting videography is wholly false as it was done, though was not mandatory to upload on website as per contents of additional reply dated 01.10.2018 and Rule 7 of the Haryana Affiliated Colleges (Security of Services) Rules, 2006.

I have heard learned counsel for parties, appraised the paper book and of the view that there is no force and merit in submissions of Mr. Nehra and the writ petition is liable to be dismissed not only on one point but many other.

Concededly, petitioner has not applied and appeared in interview. He is already working as Associate Professor in Chhotu Ram Arya College, Sonapat and attempted to become a whistle blower. It is not a public interest litigation where jurisdiction of this Court can be invoked to assail the alleged irregularity in the process of appointment to the post of Principal without following regular process. The notice of motion order dated 23.03.2018 reveals that this Court was apprised that such

advertisement was never made whereas perusal of Annexures R-3 and R-4 reveals that posts were advertised after having obtained permission from the Director General, Higher Education, thus, there was an attempt to conceal material facts from this Court.

Law with regard to estoppel as well as locus standi in laying challenge to alleged action of respondents in the absence of any participation in interview is no longer *res integra* in view of ratio culled out in para 3 of **Srikant Prasad Srivastava 's case** (supra) wherein Hon'ble Supreme Court held as under:-

“3. The other grievance made is that petitioner 4 was wrongly assumed to be not a relevant competitor not being a professor. It has to be kept in view that such a contention was never canvassed before this Court when the appeal was heard. Even no contention was raised about petitioner 3 to have not appeared in the selection process. All these contentions, therefore, which are raised for the first time in the review proceedings, cannot be countenanced. The moot question would raise whether in the light of the advertisement issued, original writ petition 4 Devendra Narain Singh could have at all applied as a candidate. In any case if he had not applied as a candidate he would stand on the same footing as petitioner 3 and could not have challenged the selection process when he was not in the arena of contest.”

Similarly in para 9 of **Madan Lal's case** (supra), it has been 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.”

In my view, petitioner has been successful in seeking stay of selection process by making a stark misrepresentation. Such type of petitioner should not be given a leverage for invoking writ jurisdiction for challenging process of selection on the post of Principal.

Dismissed.

(AMIT RAWAL)
JUDGE

November 08, 2019

Pankaj*

Whether speaking/reasoned Yes

Whether reportable No