

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

**Civil Writ Petition No. 4896 of 2021
Date of Decision: December 21, 2021**

Kiran Bala

..... PETITIONER(s)

Versus

State of Haryana and others

..... RESPONDENT(s)

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. Sanjiv Gupta, Advocate
for the petitioner.

Ms. Kirti Singh, DAG, Haryana.

LISA GILL, J.

Petitioner in this case seeks quashing of the criteria dated 16.05.2019 for selection to the post of Assistant Professor (College Cadre) Maths and for quashing the action of the respondents in not considering petitioner's candidature for the said post under BC-A category.

Petitioner applied for the post of Assistant Professor (College Cadre) Maths under the BC-A category pursuant to advertisement no.1/2019, published on 08.03.2019. It is stated that the petitioner fulfils all eligibility criteria as well as the required educational qualifications. Roll No. 52148 was issued to the petitioner. She took the written test conducted by the respondent-authorities and qualified the same. Petitioner was thereafter called for interview vide communication dated 22.06.2019. Petitioner duly participated in the interview, however, petitioner was not selected as reflected in the final result.

Detailed marks were duly published/notified (Annexure P-5).

Grievance sought to be raised by the petitioner in this writ petition is that the selection criteria followed by the respondent-Commission is arbitrary and was never made available to the candidates earlier. It is contended that genesis of the selection being bad, meritorious candidates have been discarded without justification.

I have heard learned counsel for the petitioner.

It is not denied that petitioner has duly participated in the selection process and has remained unsuccessful. It is a settled position that where a candidate has appeared and duly participated in a selection process, he/she cannot subsequently turn around to contend that there was a lacuna therein merely because the result was not palatable. Reference in this regard can gainfully be made to the decision of the Hon'ble Supreme Court in ***Chandra Prakash Tiwari Vs. Shakuntala Shukla, 2002(2) SCT 1093***, which has been reiterated by the Hon'ble Supreme Court in its subsequent decision in ***Ashok Kumar and another Vs. State of Bihar and others 2017(1) SCT 116***. The Hon'ble Supreme Court in ***Ashok Kumar's*** case (supra) referred to its various earlier pronouncements on the subject, as under:-

“12. The law on the subject has been crystalized in several decisions of this Court. In *Chandra Prakash Tiwari V. Shakuntala Shukla, 2002(2) SCT 1093 : (2002) 6 SCC 127* this Court laid down the principle that when a candidate appears at an examination without objection and is subsequently found to be not successful, a challenge to the process is precluded. The question of entertaining a petition challenging an examination would not arise where a candidate has appeared and participated. He or she cannot subsequently turn around and contend that the process was unfair or that there was a lacuna therein, merely because the result is not palatable. In *Union of India v. S. Vinodh Kumar S. Vinodh Kumar, 2007(4) SCT 479 : 2007(5) Recent Apex Judgments*

(R.A.J.) 610 : (2007)8 SCC 100, this Court held that :

“18. It is also well settled that those candidates who had taken part in the selection process knowing fully well the procedure laid down therein were not entitled to question the same...

(See also Munindra Kumar v. Rajiv Govil, 1991(2) SCT 304 : (1991)3 SCC 368 and Rashmi Mishra Vs. M.P. Public Service Commission, 2006(4) SCT 792: (2006) 12 SCC 724).

The same view was reiterated in Amlan Jyoti Borroah (supra) where it was held to be well settled that candidates who have taken part in a selection process knowing fully well the procedure laid down therein are not entitled to question it upon being declared to be unsuccessful.

In Manish Kumar Shah v. State of Bihar, (2010) 12 SCC 576 the same principle was reiterated in the following observations :

“16. We also agree with the High Court that after having taken part in the process of selection knowing fully well that more than 19% marks have been earmarked for viva voce test, the Petitioner is not entitled to challenge the criteria or process of selection. Surely, if the Petitioner's name had appeared in the merit list, he would not have even dreamed of challenging the selection. The Petitioner invoked jurisdiction of the High Court under Article 226 of the Constitution of India only after he found that his name does not figure in the merit list prepared by the Commission. This conduct of the Petitioner clearly disentitles him from questioning the selection and the High Court did not commit any error by refusing to entertain the writ petition. Reference in this connection may be made to the Judgments in MadanLal v. State of J. and K., 1995(2) SCT 880: (1995) 3 SCC 486, Marripati Nagaraja V. Government of Andhra Pradesh and Ors., 2008(1) SCT 26 : 2007(6) Recent Apex Judgement (R.A.J) 411 : (2007) 11 SCC 522, Dhananjay Malik and Ors. Vs. State of Uttranchal and Ors., 2008(2) SCT 373 : (2009) 3 SCC 227 and K.A. Nagamani V. Indian Airlines and Ors. (supra).”

In Vijendra Kumar Verma v. Public Service Commission, 2010(4) S.C.T. 556 : (2011) 1 SCC 150, candidates who had participated in the selection process were aware that they were required to possess certain specific qualifications in computer operations. The appellants had appeared in the selection process and after participating in the interview sought to challenge the selection process as being without jurisdiction. This was held to be impermissible.

In Ramesh Chandra Shah v. Anil Joshi, 2013(3) SCT 657 : (2013) 11 SCC 309 candidates who were competing for the post of Physiotherapist in the State of Uttarakhand participated in a written examination held in pursuance of an advertisement. This Court held that if they had cleared the test, the respondents would not have raised any objection to the selection process or to the methodology adopted. Having taken a chance of selection, it was held that the respondents were disentitled to seek relief under Article 226 and would be deemed to have waived their right to challenge the advertisement or the procedure of selection. This Court held that :

“18. It is settled law that a person who consciously takes part in the process of selection cannot, thereafter, turn around and question the method of selection and its outcome.”

In Chandigarh Administration v. Jasmine Kaur, 2014(4) SCT 290 : (2014) 10 SCC 521, it was held that a candidate who takes a calculated risk or chance by subjecting himself or herself to the selection process cannot turn around and complain that the process of selection was unfair after knowing of his or her non-selection. In Pradeep Kumar Rai Vs. Dinesh Kumar Pandey, 2015(3) S.C.T. 83 : (2015) 11 SCC 493 this Court held that :

“Moreover, we would concur with the Division Bench on one more point that the appellants had participated in the process of interview and not challenged it till the results were declared. There was a gap of almost four months between the interview and declaration of result. However, the appellants did not challenge it at that time. This, it appears that only when the appellants found themselves to be unsuccessful, they challenged the interview. This

cannot be allowed. The candidates cannot approbate and reprobate at the same time. Either the candidates should not have participated in the interview and challenged the procedure or they should have challenged immediately after the interviews were conducted.”

Reference has been duly made to the earlier decision of the Hon'ble Supreme Court in Pradeep Kumar Rai Vs. Dinesh Kumar Pandey, 2015(3) SCT 83, wherein it was observed that either the candidate should not have participated in the interview or should have challenged it immediately after the interviews were conducted.

It is to be noted that in the present case final result was published on 02.07.2019 and the present writ petition has been filed in February 2021, thus clearly no ground is made out for any interference at the instance of the petitioner.

No other argument has been raised.

This writ petition is accordingly dismissed with no order as to cost.

(LISA GILL)
JUDGE

21.12.2021
sunil

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No