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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Decided on: 25.04.2022

+ **W.P.(C) 5896/2022**

DR CHANDAN KUMAR PAL & ANR. Petitioners

Through: **Mr. Sagar Saxena and Mr. Parv
Garg Advs.**

versus

UPSC & ANR.

..... Respondents

Through: **Mr. Naresh Kaushik with Mr
Anand Singh, Advs. for
UPSC/R-1.
Ms Beenashaw N. Soni, Sr.
Panel Counsel with Mr Anukalp
Jain, Adv./GP for R-2/UOI.**

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

HON'BLE MS. JUSTICE MANOJ KUMAR OHRI

NAJMI WAZRI, J. (ORAL)

The hearing has been conducted through hybrid mode (physical and virtual hearing).

1. The petitioners had applied in the OBC category for the post of Specialist Grade-III Assistant Professor (Radio-Diagnosis) in Ministry of Health and Family Welfare, Government of India

(GOI). They say that candidates in the SC & ST, OBC and Unreserved Category were called for interviews on three separate dates respectively. This, according to the petitioners, is contrary to the dicta of the Supreme Court in *Pradeep Singh Dehal v. State of H.P.*(2019) 9 SCC 276 which has held *inter alia* as under:-

“....14. We find that the process of conducting separate interviews for the posts of Assistant Professor under general category and OBC category is wholly illegal. Though, none of the parties have raised any dispute about it but since the same is inherent defective, we are constrained to observe so. Every person is a general category candidate. The benefit of reservation is conferred to Scheduled Castes, Scheduled Tribes and OBC category candidates or such other category as is permissible under law. It is a consistent view of this Court starting from Indra Sawhney v Union of India that if a reserved category candidate is in merit, he will occupy a general category seat. In Indra Sawhney case, the Court held as under(SCC p. 735, para 811).

“811. In this connection it is well to remember that the reservations under Article 16(4) do not operate like a communal reservation. It may well happen that some members belonging to, say, Scheduled Castes get selected in the open competition field on the basis of their own merit; they will not be counted against the quota reserved for Scheduled Castes; they will be treated as open competition candidates.”...

2. The petitioners submit that they had no option but to appear for the interviews on the scheduled dates, as otherwise, they would have missed-out from being considered, therefore, their having so participated in the interview should not be held as an

estoppel against them, apropos their aforesaid contention. Reliance is placed on *Meeta Sahai v. State of Bihar*, (2019) 20 SCC 17 which has held *inter alia* as under:-

“...16. It is well settled that the principle of estoppel prevents a candidate from challenging the selection process after having failed in it as iterated by this Court in a plethora of judgments including Manish Kumar Shahi v. State of Bihar, observing as follows: (SCC p. 584, para 16).

"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 appellant is not entitled to challenge the criteria or process of selection. Surely, if the appellant's name had appeared in the merit list, he would not have even dreamed of challenging the selection. The [appellant] 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 appellant clearly disentitles him from questioning the selection and the High Court did not commit any error by refusing to entertain the writ petition. The underlying objective of this principle is to prevent candidates from trying another shot at consideration, and to avoid an impasse wherein every disgruntled candidate, having failed the selection, challenges it in the hope of getting a second chance.

17. However, we must differentiate from this principle insofar as the candidate by agreeing to participate in the selection process only accepts the prescribed procedure and not the illegality in it. In a situation where a candidate alleges misconstruction of statutory rules and discriminating consequences arising there from, the same cannot be condoned merely because a candidate has partaken in it. The constitutional scheme is sacrosanct and its violation in any manner is impermissible. In fact, a

candidate may not have locus to assail the incurable illegality or derogation of the provisions of the Constitution, unless he/she participates in the selection process.”....

3. The impugned order has dismissed the petitioners’ OA on the ground that they had already participated in the recruitment process and had appeared before the Interview Committee, therefore they were stopped from raising any issues/objections apropos, the results which have been declared.
4. The learned counsel for R-1/UPSC, who appears on advance copy, states without prejudice to the rights and contentions that, the issue of candidates belonging to the different categories being called on several different dates was not agitated before the learned Tribunal. To the court, it appears that the issue raised by the petitioners is fundamental to the recruitment process and the issue needs to be adjudicated before the court of first instance i.e. learned CAT.
5. In view of the above, the impugned order is set aside, the case be remanded to the learned Tribunal for determination of the afore-stated issue, on the basis of such further documents as may be furnished by the parties. Since candidates of other categories have been shortlisted, and are likely to be appointed soon, the court would request the learned CAT to endeavour to dispose-off the petitioners’ case preferably within a period of four months.
6. The petition stands disposed-off, in the above terms.

7. List before the learned Tribunal on 05.05.2022.

NAJMI WAZIRI, J

MANOJ KUMAR OHRI, J

APRIL 25, 2022/dss

