

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

CWP-12834-2020

Date of decision: 27.02.2023

Shubhangi Kaushik

...Petitioner

Versus

State of Haryana and another

....Respondents

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present:- Mr. Abhimanyu Singh, Advocate,
for the petitioner.

Mr. Rajesh Gaur, Addl. A. G. Haryana.

Mr. Govind Tanwar, Advocate and
Mr. Kanwal Goyal, Advocate,
for respondent No.2.

HARNARESH SINGH GILL, J. (ORAL)

Challenge in the present petition is to the final result dated 09.02.2017 (Annexure P-2) vide which four candidates in the General Category have been shown to have cleared the exam. A direction is also sought for to disclose the criteria adopted for filling up the post of the Assistant Professor.

Learned counsel for the petitioner contends that while declaring the result, respondent No.2-HPSC had clubbed the marks of personal achievement and interview; that bifurcation of the marks obtained in the viva-voce had not been illustrated by respondent No.2-HPSC; that out of 50 marks, the petitioner had been awarded only 28 marks on

account of personal achievement and interview, and that in the selection process, pick and choose policy had been adopted.

On the other hand, learned State counsel and learned counsel for respondent No.2 submit that once the petitioner had fully participated in the selection process, she cannot turn around and question the terms and conditions of the advertisement, especially when she is not within the zone of consideration.

I have heard the learned counsel for the parties.

A perusal of the record would show that in pursuance of the advertisement dated 16.02.2016 (Annexure P-1), the petitioner had applied for the post of Assistant Professor, Bio-technology, in the General Category; that in the written examination, she had secured 45.51 marks; that she had also appeared for viva-voce, and that she had secured total 73.51 marks, whereas the last selected candidate in the General Category had secured 75.33 marks.

It is undisputed fact that the petitioner had participated in the selection process. However, when she could not make the grade due to her obtaining lesser marks than the last selected candidate in the General Category, she chose to file the present petition. It is settled law that having fully participated in the selection process, it is not open to a candidate to challenge the selection process. More so, even

the last selected candidate has not been arrayed as one of the respondents in the present petition.

The Hon'ble Supreme Court in Madras Institute of Development Studies and another Vs. Dr. K.Sivasubramaniyan and others, 2015 AIR (Supreme Court) 3643, held as under:

“20. The question as to whether a person who consciously takes part in the process of selection can turn around and question the method of selection is no longer res integra.

21. [In Dr. G. Sarana vs. University of Lucknow & Ors.](#), (1976) 3 SCC 585, a similar question came for consideration before a three Judges Bench of this Court where the fact was that the petitioner had applied to the post of Professor of Athropology in the University of Lucknow. After having appeared before the Selection Committee but on his failure to get appointed, the petitioner rushed to the High Court pleading bias against him of the three experts in the Selection Committee consisting of five members. He also alleged doubt in the constitution of the Committee. Rejecting the contention, the Court held:-

“15. We do not, however, consider it necessary in the present case to go into the question of the reasonableness of bias or real likelihood of bias as despite the fact that the appellant knew all the relevant facts, he did not before appearing for the interview or at the time of the interview raise even his little finger against the

constitution of the Selection Committee. He seems to have voluntarily appeared before the committee and taken a chance of having a favourable recommendation from it. Having done so, it is not now open to him to turn round and question the constitution of the committee. This view gains strength from a decision of this Court in Manak Lal's case where in more or less similar circumstances, it was held that the failure of the appellant to take the identical plea at the earlier stage of the proceedings created an effective bar of waiver against him. The following observations made therein are worth quoting: "It seems clear that the appellant wanted to take a chance to secure a favourable report from the tribunal which was constituted and when he found that he was confronted with an unfavourable report, he adopted the device of raising the present technical point."

22. [In Madan Lal & Ors. vs. State of J&K & Ors.](#)

(1995) 3 SCC 486, similar view has been reiterated by the Bench which held that:-

"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 respondents concerned herein, were all found eligible in the light of marks obtained in the written test, to be eligible to be called for oral interview. Up to this stage there is no dispute between the parties. The petitioners also appeared at the oral interview conducted by the Members concerned of the Commission who interviewed the petitioners as well as the contesting respondents concerned. 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, 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 the Selection Committee was not properly constituted. In the case of [Om Prakash Shukla v. Akhilesh Kumar Shukla](#)¹ 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.

23. [In Manish Kumar Shahi vs. State of Bihar](#), (2010) 12 SCC 576, this Court reiterated the principle laid down in the earlier judgments and observed:-

“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.”

24. In the case of [Ramesh Chandra Shah and others vs. Anil Joshi and others](#), (2013) 11 SCC 309, recently a Bench of this Court following the earlier decisions held as under:-

“In view of the propositions laid down in the above noted judgments, it must be held that by having taken part in the process of selection with full knowledge that the recruitment was being made under the General Rules, the respondents had waived their right to question the advertisement or the methodology adopted by the Board for making selection and the learned Single Judge and the Division Bench of the High Court committed grave error by entertaining the grievance made by the respondents.”

The contention of learned counsel for the petitioner that the petitioner had been awarded less marks in the viva-voce, is not tenable for the reason that she did not raise a finger against the concerned committee before joining the process of interview. She had voluntarily appeared before the concerned committee for interview. Moreover at this stage, she cannot raise a plea for bifurcation of marks on account of personal achievement and interview. As per the stand taken by the Commission, no bifurcation of marks can be disclosed or displayed before the final result, is declared and after declaration of the final result, complete mark list of all the candidates was uploaded on the website of the Commission so as to put the same in the public domain.

In view of the above discussion, this Court does not find any merit in the present petition.

Dismissed.

27.02.2023

parveen kumar

(HARNARESH SINGH GILL)
JUDGE

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