

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-12527-2016 (O&M)
Date of Decision:23.08.2023

NALIN MALIK

..... Petitioner

Versus

CENTRAL UNIVERSITY OF HARYANA AND ORS.

..... Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present : Mr. Lalit Pardhan, Advocate
for the petitioner.

Mr. Aman Pal, Advocate
for respondents No.1 and 2.

Mr. Sudhanshu Makkar, Advocate
for respondent No.3.

Mr. Rajender Helwa, Advocate
for respondent No.4.

JAGMOHAN BANSAL, J. (Oral)

1. The petitioner through instant petition under Article 226/227 of the Constitution of India is seeking setting aside of selection of respondents No.3 and 4 on the post of Assistant Professor in the Department of History and Archaeology. Further seeking direction to respondents to allow the petitioner to join on the post of Assistant Professor.

2. The brief facts of the case are that pursuant to advertisement by Central University, Haryana at Mahendergarh, the petitioner vide application dated 15.07.2015 applied for the post of Assistant Professor.

The petitioner has completed his Ph.D. in 2004 and M.Phil in 2009. The

University on 29.12.2015 issued list of eligible candidates. The University on 30.03.2016 after considering objections issued list of short listed candidates. The respondent- University vide letter dated 30.03.2016 called the petitioner for interview which was held on 11.04.2016. The final result was declared on 04.06.2016. Two candidates i.e. respondents No.3 and 4 came to be selected. The advertisement besides other posts was for 3 posts under General Category, however, University opted to select two candidates and kept one post vacant in General Category. The petitioner was not selected and through instant petition is challenging appointment of respondents No.3 and 4.

3. Learned counsel for the petitioner *inter alia* contends that petitioner completed his Ph.D in 2004 still he has not been awarded marks of experience. The selected candidates have been awarded 10 marks on the basis of Ph.D. whereas as per instructions issued by Kurukshetra University, Kurukshetra, no marks are to be awarded to a candidate who has secured Ph.D. degree without clearing NET/SET. The respondent No.3 i.e. selected candidate was having Ph.D. degree, however, he had not cleared NET exam, thus, he has been wrongly awarded 10 marks on the basis of Ph.D.

4. Per contra, learned counsel for respondents No.1 and 2 asserts that selection criteria was uploaded on the site of the University on 11.08.2015 and interview was conducted on 11.04.2016. The petitioner was having quite sufficient time to challenge the selection criteria, however, without challenging selection criteria he participated in the process and on being unselected, he is assailing appointment of other candidates. Even if the petitioner is awarded 7 marks on account of

experience, he would not be able to achieve the target because selected candidates have secured much more marks than the petitioner. There are more than 30 candidates who have secured more marks than the petitioner.

5. Learned counsel for respondents No.3 and 4 supporting contention of respondents No.1 and 2 University would submit that petitioner participated in the selection process and he secured less marks than the selected candidates, thus, there was no question of selection of petitioner. The University had declared its selection criteria prior to interview and there is no allegation of fraud or connivance, thus, challenge of the petitioner is unsustainable.

6. I have heard the arguments of both sides and with the able assistance of learned counsels have perused the record.

7. From the perusal of record and arguments of the parties, it comes out that post in question was advertised in 2015 and selection criteria was uploaded on the site of the University in 2015. The interview was conducted in April' 2016 and petitioner was having quite sufficient time to challenge the selection criteria. The petitioner is heavily relying upon instructions issued by Kurukshetra University, Kurukshetra. Firstly, the instructions issued by Kurukshetra University, Kurukshetra which is a State University cannot be made applicable to respondent- University which is a Central University. Secondly, the instructions are part of resolution dated 17.01.2022 whereas selection process in hand came to be concluded in April' 2016.

8. It is settled proposition of law that a candidate who has participated in the selection process cannot challenge selection on being

unselected.

A two Judge Bench of Hon'ble Supreme Court in ***State of Uttar Pradesh Vs. Karunesh Kumar and other 2022 SCC Online SC 1706*** has clearly held that a candidate who has participated in the selection process is estopped and cannot challenge the selection process. He has acquiesced himself from questioning it thereafter. The relevant extracts of the judgment read as:

“21. A candidate who has participated in the selection process adopted under the 2015 Rules is estopped and has acquiesced himself from questioning it thereafter, as held by this Court in the case of Anupal Singh (supra):

“55. Having participated in the interview, the private respondents cannot challenge the Office Memorandum dated 12-10-2014 and the selection. On behalf of the appellants, it was contended that after the revised Notification dated 12-10-2014, the private respondents participated in the interview without protest and only after the result was announced and finding that they were not selected, the private respondents chose to challenge the revised Notification dated 12-10- 2014 and the private respondents are estopped from challenging the selection process. It is a settled law that a person having consciously participated in the interview cannot turn around and challenge the selection process.

56. Observing that the result of the interview cannot be challenged by a candidate who has participated in the interview and has taken the chance to get selected at the said interview and ultimately, finds himself to be unsuccessful, in Madan Lal v. State of J&K [(1995) 3

SCC 486 : 1995 SCC (L&S) 712], it was held as under : (SCC p. 493, para 9)

“9. ... 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.”

57. In K.H. Siraj v. High Court of Kerala [(2006) 6 SCC 395 : 2006 SCC (L&S) 1345], it was held as under : (SCC p. 426, para 73)

“73. The appellant-petitioners having participated in the interview in this background, it is not open to the appellant-petitioners to turn round thereafter when they failed at the interview and contend that the provision of a minimum mark for the interview was not proper.”

58. In Union of India v. S. Vinodh Kumar [(2007) 8 SCC 100 : (2007) 2 SCC (L&S) 792], it was held as under : (SCC p. 107, para 19)

“19. *In Chandra Prakash Tiwari v. Shakuntala Shukla* [(2002) 6 SCC 127 : 2002 SCC (L&S) 830]

xxx xxx xxx

It was further observed : (SCC p. 149, para 34)

‘34. There is thus no doubt that while question of any estoppel by conduct would not arise in the contextual facts but the law seem to be well settled that in the event a candidate appears at the interview and participates therein, 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 there was some lacuna in the process.’

59. Same principle was reiterated in *Sadananda Halo v. Momtaz Ali Sheikh* [(2008) 4 SCC 619 : (2008) 2 SCC (L&S) 9] wherein, it was held as under : (SCC pp. 645-46, para 59)

*“59. It is also a settled position that the unsuccessful candidates cannot turn back and assail the selection process. There are of course the exceptions carved out by this Court to this general rule. This position was reiterated by this Court in its latest judgment in *Union of India v. S. Vinodh Kumar* [(2007) 8 SCC 100 : (2007) 2 SCC (L&S) 792] The Court also referred to the judgment in *Om Prakash Shukla v. Akhilesh Kumar Shukla* [1986 Supp SCC 285 : 1986 SCC (L&S) 644], where it has been held specifically that when a candidate appears in the examination without protest and subsequently is found to be not successful in the examination, the question of entertaining the petition challenging such examination would not arise.”*

9. A similar opinion has been expressed by a two Judge Bench of Hon’ble Supreme Court in *Dhananjay Malik and others vs. State of*

Uttaranchal and others 2008 (4) SCC 171.

10. In the case in hand, the petitioner duly participated in the selection process and selection criteria was within public domain in the year 2015 whereas interview was conducted in April’ 2016. The petitioner opted to participate in the selection process and did not raise objection till he was declared unselected candidate. The act of petitioner amounts to acquiesce to the selection process and he is estopped from challenging the selection process at this belated stage. The law laid down by Hon’ble Supreme Court in the aforecited judgments is squarely applicable to the facts of the present case.
11. The present petition being devoid of merit deserves to be dismissed and accordingly dismissed.

(JAGMOHAN BANSAL)

JUDGE

23.08.2023

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Whether speaking/reasoned	Yes/No
<i>Whether Reportable</i>	<i>Yes/No</i>