

**IN THE HIGH COURT OF PUNJAB AND HARYANAAT
CHANDIGARH**

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CWP-15593-2020 (O&M)

Date of Decision: 09.02.2023

YOGESH KUMAR AND ANR

... Petitioners

Versus

STATE OF HARYANA AND ORS

... Respondents

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Mr. Sourabh Kandoi, Advocate for
Mr. Balkar Singh, Advocate for the petitioners.

Mr. Rohit Arya, DAG Haryana.

Ms. Harpriya Khaneka, Advocate for respondent No.3.

Mr. SS Randhawa, Advocate
for respondents No.4 and 5.

HARNARESH SINGH GILL, J.(Oral)

Through this petition, the petitioners seek issuance of a writ in the nature of Certiorari setting aside the final result dated 18.09.2020 (Annexure P-5), for the post of Assistant Director (Technical)/Principal, Industrial Training Institute Group A Junior.

Learned counsel for the petitioners submits that against advertisement No.3(5) of 2017 dated 07.12.2017, the petitioners had applied for the aforesaid posts, under the General Category; that the petitioners appeared for the written examination on 11.08.2020; that the result was declared on 27.08.2020; that the candidates seven times the posts, in each category, including the petitioners, were called for the documentation and that the petitioners were called for the interview on 03.09.2020.

At this stage, learned counsel for respondent No.3 has pointed out that the petitioners along with respondents No.4 and 5 had appeared in the recruitment process, for the posts in question; that they were called for the documentation and thereafter for interview as well by the Department; that, it was found that only respondents No.4 and 5 possessed the requisite qualification and accordingly, they were declared successful under General and Backward Classes-A Categories; that the petitioners had secured 66.25 and 61.60 marks, respectively under General Category and that the last selected candidate under the said Category had secured 70.875 marks. She further submits that once the petitioners have participated in the entire recruitment process, they cannot turn around to challenge the same and that too, after having been declared unsuccessful.

In support of her contentions, learned counsel for respondent No.3 relies upon the judgments passed by the Hon'ble Apex Court in Trivedi Himanshu Ghanshyambhai vs Ahmedabad Municipal Corporation and others, 2007 (8) SCC 644 and Dr. Basavaiah vs Dr. H.L. Ramesh and others, 2010 (8) SCC 372.

I have heard the learned counsel for the parties.

As noticed above, the petitioners have taken part in the entire recruitment process and after due consideration, they were not able to make the grade.

In Dr. Basavaiah's case (supra), the Hon'ble Apex Court has held as under:-

- “45. We have dealt with the aforesaid judgments to reiterate and reaffirm the legal position that in the academic matters, the courts have a very limited role particularly when no mala fide has been alleged against the experts constituting the selection committee. It would normally be prudent, wholesome and safe for the courts to leave the decisions to the academicians and experts. As a matter of principle, the courts should never make an endeavour to sit in appeal over the decisions of the experts. The courts must realize and appreciate its constraints and limitations in academic matters.*
- 46. In the impugned judgment, the High Court has ignored the consistent legal position. They were expected to abide by the discipline of the precedents of the courts. Consequently, we are constrained to set aside the impugned judgment of the Division Bench of the High Court and restore the judgment of the Single Judge of the High Court.*
- 47. The University of Mysore, respondent herein, is directed to give regular pay-scale to the appellants from 1st August, 2010. To avoid any further litigation, we may make it clear that the appellants would not be entitled to claim any arrears or benefits for the past period.*
- 48. The appeals are allowed, but, in the facts and circumstances of the case, we direct the parties to bear their own costs.”*

In Trivedi Himanshu Ghanshyambhai's case (supra), the

Hon'ble Apex Court has held as under:-

'8. As noted herein earlier, respondents 2 and 3 who had filed the writ petition before the High Court, challenging the appointment of the appellant were themselves unsuccessful in the examination, even though they claimed that they had passed the written examination but failed in the interview. Since the names of respondents 2 and 3, who were the writ petitioners before the High Court, did not figure in the merit list, in our view, it was not open to them to challenge the said selection list and the appointment of the appellant before the High Court.

*9. It is not in dispute that the respondents 2 and 3 as well as the appellant were all found eligible, in the light of the marks obtained in the written test, to be called for the oral interview. Up to this stage, there was no doubt. The Respondents 2 and 3 and the appellant appeared before the Committee constituted by the corporation for conducting the oral interview. The respondents 2 and 3 could not clear the oral interview and were not selected whereas the appellant was found successful and accordingly, selected. Therefore, there cannot be any dispute that only because the respondents 2 and 3 could not get selected and named in the final merit list, as a result of their combined performance, both in the written test as well as in the oral interview, they challenged the appointment of the appellant and other selected candidates by moving the writ petition. Such being the position, we are of the view that the High Court was not justified in exercising its power under **Article 226** of the Constitution by granting relief to the writ petitioners, who are now respondents 2 and 3 in this*

appeal. As we are of the opinion that the appellant did possess the administrative experience of ten years required for selection to the post of Assistant Manager in view of the varied nature of work performed by him while working as an X-ray Technician, we do not find any reason to take a view, different from the one taken by the Corporation and the Selection Committee. Therefore, we are of the view that it was not open to the respondents 2 and 3 to challenge the appointment of the appellant and other selected candidates, as they were themselves unsuccessful in the test. In this connection, reliance can be placed on a decision of this Court in the case of Madan Lal and Others Vs. State of J & K and Others [(1995) 3 SCC 486].

10. Accordingly, we are of the view that the High Court was neither justified in interfering with the appointment of the appellant by holding that he did not possess the requisite administrative experience of ten years while working as an X- ray Technician nor was it open to the High Court to entertain the writ petition challenging the appointment of the appellant and other selected candidates at the instance of the unsuccessful candidates.”

A perusal of the writ petition would show that the petitioners have averred that some candidates not having requisite qualifications, were appointed and that the Committee constituted by the official respondents had given opinion in their favour. However, such assertions are without any documentary proof thereof or without any proof of a mala-fide.

As noticed above, it is a settled law that the academic matters, the Courts have a limited role and the Court must not sit in appeal over the decisions of the experts. Still further, the petitioners after having participated in the entire selection process, cannot be allowed to turn around and challenge the selection process.

Dismissed.

09.02.2023

Aman Jain

(HARNARESH SINGH GILL)

JUDGE

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