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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-2076-2017

Date of Decision:31.08.2023

AJAY KUMAR

..... Petitioner

Versus

CENTRAL UNIVERSITY OF HARYANA AND ORS

..... Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present : Mr. Sumit Sangwan, Advocate
for the petitioner.

Mr. Puneet Gupta, Advocate with
Mr. Kshitiz Goel, Advocate and
Mr. Ravindra Singh, Advocate
for respondents No.1 to 4.

Mr. Salil Sabhlok, Advocate
for respondent No.6.

Mr. Vishal Aggarwal, Advocate
for respondent No.7.

JAGMOHAN BANSAL, J. (Oral)

1. Mr. Puneet Gupta, Advocate has put in appearance on behalf of respondents No.1 to 4 and filed his power of attorney. The same is taken on record. Registry is directed to tag the same at the appropriate place.

2. The petitioner through instant petition under Article 226/227 of the Constitution of India is seeking setting aside of selection of respondent No.7 on the post of Public Relation Officer pursuant to advertisement dated 03.05.2016 (Annexure P-1).

3. The petitioner pursuant to advertisement of respondent-University applied for the post of Public Relation Officer. The respondent-

University conducted interview. On the basis of experience, qualifications and interview, the Selection Committee selected respondent No.7 for the post of Public Relation Officer. The petitioner, on being not selected, has preferred present writ petition assailing appointment of respondent No.7.

4. Learned counsel for the petitioner *inter alia* contends that petitioner was much qualified than respondent No.7. The petitioner was carrying better experience and he was better in English speaking, thus, respondent No.7 has been wrongly selected. Despite having better experience of speaking English, the respondent No.7 has been selected which amounts to violation of selection criteria.

5. Learned counsel for the respondent-University submits that there is no allegation of *mala-fide* rather it is case of the University that petitioner with intent to influence Selection Committee vide e-mail dated 21.10.2016 sought time to conduct interview of Vice Chancellor with respect to one controversy going in the University. The Selection Committee has followed prescribed procedure. The respondent No.7 is working for last 6 years and his conduct during this period has been found satisfactory. There seems no reason to interfere with opinion of Selection Committee.

6. Learned counsel for respondent No.7 submits that respondent No.7 met with minimum eligibility criteria and he was having better education qualification than petitioner. The respondent No.7 secured more marks in matric, 10+2 and Graduation than petitioner. The respondent No.7 was having vast experience and on the basis of experience Selection Committee had selected respondent No.7.

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

8. The conceded position emerging from record is that respondent-University advertised post in 2016 and respondent No.7 was selected in 2017. The petitioner as well as respondent No.7 fulfilled minimum eligibility criteria. The Selection Committee called petitioner as well as respondent No.7 for the interview. The respondent No.7 was selected and petitioner was found in waiting list. The respondent No.7 is working since 2017 and on being asked, learned counsel for the respondents have confirmed that he is still continuing and University has found his act and conduct as well as performance satisfactory.

9. The petitioner indubitably participated in the selection process. The petitioner is not making any allegation of biasness against members of the Selection Committee. There is no allegation of non-compliance of procedure by Selection Committee. The respondent No.7 is working since 2017 and respondent-University has found his performance satisfactory.

10. 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 Vs. State of U.P.**, (2020) 2 SCC 173:*

“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.”

11. 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.***

12. In the case in hand, the petitioner duly participated in the selection process. There is no allegation of fraud, favoritism or misuse of process by Selection Committee, though, petitioner has arrayed Vice Chancellor in the list of respondents. The sole ground to challenge selection of respondent No.7 is that petitioner is having better experience of speaking English. This Court cannot sit over decision of Selection Committee. It was for the Selection Committee to consider merits and demerits of the participating candidates.

It further needs to be noticed that respondent No.7 is working with respondent No.1 for last more than 6 years. The respondent-University has found his act, conduct and performance satisfactory. The respondent No.7 has got experience of 6 years and respondent-University is getting benefit of said experience. Substitution of respondent No.7 by petitioner would deprive University from benefit of experience of respondent No.7. There is no foul play on the part of respondent No.7 in the selection process, thus, it would not be just, fair and appropriate to set aside appointment of respondent No.7 at this stage.

13. In view of law laid down by Hon’ble Supreme Court in afore-cited judgments, this Court cannot substitute opinion of Selection Committee by its opinion. The present petition being devoid of merits deserves to be dismissed and accordingly dismissed.

(JAGMOHAN BANSAL)
JUDGE

31.08.2023
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Whether speaking/reasoned	Yes/No
<i>Whether Reportable</i>	<i>Yes/No</i>