

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

LPA-1184-2022 (O&M)
Reserved on: 07.11.2023
Pronounced on: 09.11.2023

Santosh and Others

... Appellants

Versus

State of Haryana and Others

... Respondents

**CORAM: HON'BLE MS.JUSTICE RITU BAHRI, ACTING CHIEF JUSTICE
HON'BLE MR.JUSTICE AMAN CHAUDHARY**

Present: Mr. Parminder Singh-I, Advocate for the appellant

Mr. Deepak Balyan, Additional AG, Haryana

AMAN CHAUDHARY, J.

CM-2866-LPA-2022

For the reasons stated in the application, delay of 3 days is hereby condoned, subject to all just exceptions.

Main Appeal

1. Challenge in the present intra-Court appeal, under Clause X of the Letters Patent is to the judgment dated 29.10.2022, vide which, the learned Single Judge dismissed the civil writ petition preferred by the appellants.

2. Learned counsel contended that despite the appellants having higher academic qualifications, the private respondents were wrongly selected to the post of Ayurvedic Medical Officer, which requires to be quashed and instead they ought to have been selected and appointed under the Scheduled Caste Category, which was not appreciated properly. No criteria had been mentioned in the advertisement. The select list thus, was required to be reframed by including the appellants being more meritorious. These facts escaped notice of the learned Single Judge and the writ petition was dismissed on ground of delay and laches.

3. Learned State counsel on the other hand opposed on the ground that the appellants being not within the merit, were rightly not recommended for appointment and in their place, the private respondents, who were deserving on basis of their score were appointed more than a decade ago in the year 2012 and since that time onwards till date, they are working.

4. Heard learned counsel on either side.

5. It is worthwhile to notice at the outset that 8 posts of Ayurvedic Medical Officer, Group-B had been reserved for Scheduled Caste category. The selection culminated wayback on 11.08.2011, upon declaration of the result, based on which, the private respondents having made to the select list were accordingly appointed and working since then, the last of whom by scoring 53 marks, whereas that of the appellants were a maximum of 51 out of 100.

6. In wake of the submissions advanced on behalf of the appellants, it would be gainful to refer to **Madan Lal vs. State of J&K**, (1995) 3 SCC 486, wherein also the appellants had challenged the process of selection process of Munsiffs, on various grounds, one of them being that they had fared well in the written test as compared to the selected candidates, yet at the viva-voce they were pushed down by assigning low marks and Hon'ble the Supreme Court observed that, "...The petitioners also appeared at the oral interview conducted by the concerned Members of the Commission who interviewed the petitioners as well as the concerned contesting respondents. 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, that they have filed that 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 Selection Committee was not properly constituted. In the case of **Om Prakash Shukla v. Akhilesh Kumar Shukla and others**, (AIR 1986 Supreme Court 1043), 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.” The aforesaid dictum has been reiterated in **Anupal Singh vs. State of U.P.**, (2020) 2 SCC 173, which was further followed in **State of U.P. vs. Karunesh Kumar**, 2022 SCC OnLine SC 1706.

7. The next limb of argument regarding the criteria and select list also does not merit acceptance in view of **Vishal Ashok Thorat vs. Rajesh Shrirambapu Fate**, (2020) 18 SCC 673, in which Hon’ble the Supreme Court held that when a person is not permitted to challenge the advertisements and process of recruitment, the select list which is outcome of such recruitment process also cannot be interfered at his instance.

8. Finding no infirmity, we decline to interfere, particularly when the appellants had consciously participated in the selection process without raising even an eyebrow on the criteria not being made available or any like objection with regard to the procedure and after everything was over, they would be precluded from questioning such aspects.

9. As a corollary, the present appeal being sans merit is dismissed.

(RITU BAHRI)
ACTING CHIEF JUSTICE

(AMAN CHAUDHARY)
JUDGE

09.11.2023
gsv/mkk

Whether speaking / reasoned: YES / NO
Whether Reportable: YES / NO