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court no. 35
serial no. 05
kaushik

WPA 25554 of 2017

Tapas Mishra
Vs.
The State of West Bengal & Ors.

Mr. Sutirtha Das,
Mr. Prabir Banerjee, Advocates
... .. for the Petitioners

Mr. Tarun Kumar Das, Advocates
... .. for the respondent no. 8

Mr. Madan Mohan Roy, Advocates
... .. for the respondent nos. 3 to 5

Ms. Debjani Sengupta,
Ms. Shalina Hoque, Advocates
... .. for the Vidyasagar University

The writ petitioner is the unsuccessful candidate in the selection process for "Library Clerk", advertised by 'Egra Sarada Shashi Bhushan College' (hereinafter referred to as 'college') on 6th October, 2005.

His specific grievance is with regard to the selection process undertaken pursuant to the said advertisement as well as selection of the present respondent no. 8, to the said post.

Mr. Sutirtha Das, learned advocate for the writ petitioner has categorically submitted and alleged of bias having been exercised in the selection process as well as the selection of the respondent no.8 to the said post. It has been submitted by referring to the document annexed with the writ petition that, the respondent no. 8 has been a member of the governing body of the self-same college. As such, he says, that there would be every possibility of a bias

and partiality having been exercised during the selection process, as finally the respondent no. 8 has emerged as a successful candidate in that process. It has further been submitted before the Court that, the writ petitioner is a clerk in the library of the said college appointed on temporary basis and was employed as such on the date when the advertisement was published.

On the grounds as above, the writ petitioner has prayed for, inter alia, a direction of a Court 'to initiate fresh selection for filling up of the post of Library Clerk (General) lying vacant in the Egra Sarada Shashi Bhushan College in accordance with law'.

The respondent no. 8 is the principal defender in the instant writ petition. Ms. Tapati Samanta, learned advocate appears for the State. Mr. Tarun Kumar Das, learned advocate appearing on behalf of respondent no. 8, has made submissions on three grounds. Firstly, that the instant writ petitioner has come up before the Court at a belated stage, which cannot be reasonably explained. Secondly, he has stated that in terms of the settled principles of law, the present writ petition cannot be entertained as the writ petitioner has participated in the selection process, without any protest raised at the relevant point of time and as such he is now estopped from raising any grievance or challenge to the appointment of respondent no. 8 or the process itself. On this, he has relied on the following judgments:

1. **Union of India & Ors. Vs. S. Vinod Kumar & Ors.** reported in **(2007) 8 SCC 100**, the Court observed that "..... but that does not bar a contention as regards the right to challenge an appointment upon due participation at the

interview/selection. It is a remedy which stands barred and it is in this perspective in Om Prakash Shukla (Om Prakash Shukla v. Akhilesh Kumar Shukla and Ors.), a three Judge Bench of this Court laid down in no uncertain terms that when a candidate appears at the examination without protest and subsequently found to be not successful in the examination, question of entertaining a petition challenging the said examination would not arise."

2. Madan Lal & Ors. Vs. The State of Jammu & Kashmir & Ors. reported in **(1995) 3 SCC 486**, the Court observed as follows:

"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 concerned respondents herein, were all found eligible in the light of marks obtained in the written test, to be eligible to be called for oral interview. Upto this stage there is no dispute between the parties. 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 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 Selection Committee was not

properly constituted. In the case of *Om Prakash Shukla v. Akhilesh Kumar Shukla & Ors.*, (AIR 1986 SC 1043), it has been clearly laid down by 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.

10. Therefore, the result of the interview test on merits cannot be successfully challenged by a candidate who takes a chance to get selected at the said interview and who ultimately finds himself to be unsuccessful. It is also to be kept in view that in this petition we cannot sit as a Court of appeal and try to reassess the relevant merits of the concerned candidates who had been assessed at the oral interview nor can the petitioners successfully urge before us that they were given less marks though their performance was better. It is for the Interview Committee which amongst others consisted of a sitting High Court Judge to judge the relative merits of the candidates who were orally interviewed in the light of the guidelines laid down by the relevant rules governing such interviews. Therefore, the assessment on merits as made by such an expert committee cannot be brought in challenge only on the ground that the assessment was not proper or justified as that would be the function of an appellate body and we are certainly not acting as a court of appeal over the assessment made by such an expert committee."

3. **Om Prakash Shukla Vs. Akhilesh Kumar Shukla & Ors.** reported in **AIR 1986 SC 1043**, the

Court observed that, "Moreover, this is a case where the petitioner in the writ petition should not have been granted any relief. He had appeared for the examination without protest. He filed the petition only after he had perhaps realised that he would not succeed in the examination. The High Court itself has observed that the setting aside of the results of examinations held in the other districts would cause hardship to the candidates who had appeared there. The same yardstick should have been applied to the candidates in the District of Kanpur also. They were not responsible for the conduct of the examination.

For the foregoing reasons we feel that the judgment of the High Court should be set aside. We accordingly set aside the judgment of the High Court and dismiss the Writ Petition. The appellant and all other successful candidates at the 1981 examination held in Kanpur shall be appointed in accordance with the Rules."

Respondent no. 8 as well as respondent nos. 3 to 5 i.e. the college authority have relied on an order of this Court dated 23rd February, 2017 passed in **W.P. No. 2297(W) of 2017**. In the said order, in connection with another writ petition challenging the same selection process, this Court has upheld the same and directed the respondent/college to take the selection to its logical end. The said respondents as well as the State-respondent have submitted in unequivocal terms that, pursuant to the said order of this Court, the selection process was completed and the respondent no. 8, having been found as a successful candidate, was appointed in the year 2017. On behalf of the State, it is submitted that the

appointment of respondent no. 8 has been approved in 2019.

All the respondents have prayed for dismissal of the present writ petition.

On perusal of the materials before this Court and consideration of the law, as is now well-settled and enumerated in the judgments referred to on behalf of the respondent no. 8, as mentioned above, it may be summarised that after participating in the process of selection without raising any protest, as regards its illegality, one shall be debarred to subsequently challenge the process. A larger bench of the Hon'ble Supreme Court in the case of **Om Prakash Shukla Vs. Akhilesh Kumar Shukla & Ors.** reported in **AIR 1986 SC 1043** has also concluded to that effect and the said law is thus presently settled and governing the field.

A plea of bias should not only to be laid down, but also should be substantiated, by sufficient material. The writ petitioner has participated in the selection process and has never questioned its veracity or legality before the same was exhausted, upon publication of results. Results have disappointed the writ petitioner as he has been unsuccessful and thus this writ petition is filed, on the ground of biasness and arbitrariness in conducting the selection process. Petitioner's grounds are based on apprehension as he is unable to specifically indicate the components of alleged bias or arbitrariness. The petitioner has waited for his luck to click and never protested before the process was completed. His participation has never been without prejudice to his rights. Hence, according to the settled law, the process of selection when culminated into finality

would not allow the writ petitioner, who has participated into the same, to challenge the same. The element of bias could not be brought on record by the writ petitioner by producing sufficient materials excepting the fact that in spite of his possessing several extra curricular certificates, he has been granted less marks than the successful candidate. However, a Court of Equity would not interfere as to the objective consideration of the authority unless the decision making process is tainted with arbitrariness, lawlessness or bias.

The contention of bias in selection of respondent no. 8 in view of the fact of being the member of the governing body of the college is a far fetched one, being not substantiated by any other sufficient materials.

In view of the facts and circumstances of the present case, this Court is of the opinion that the present writ petition should fail.

W.P.A. 25554 of 2017 is dismissed along with connected application, if any, without any order as to costs.

(Rai Chattopadhyay, J.)