



LPA No.641 of 2024

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH****LPA NO.641 OF 2024 (O&M)****DATE OF DECISION: NOVEMBER 25, 2024****Vikas Sharma****...Appellant****Versus****State of Haryana and others****...Respondents****CORAM : HON'BLE MR. JUSTICE DEEPAK SIBAL
HON'BLE MS. JUSTICE LAPITA BANERJI**

Present : Mr. Manjot Singh, Advocate for
Mr. Vishal Aggarwal, Advocate,
for the appellant.

LAPITA BANERJI, J.

Under challenge in the present letters patent appeal is the judgment dated January 10, 2024 passed by an Hon'ble Single Judge of this Court in CWP No.4755 of 2015 ("Impugned order"). Vide the Impugned judgment, the Hon'ble Single Judge has dismissed the appellant's petition through which he had, *inter-alia*, prayed for the third respondent-Haryana School Teachers Selection Board (hereinafter referred to as "the Board") to re-interview and re-assess his merit and award him marks according to the prescribed criteria.

2. The facts of the present appeal are as follows:

i) An advertisement No.1/2012 was published on June 07, 2012 for filling up of various posts of Post Graduate Teachers (hereinafter referred to as "the PGTs"). Out of the advertised posts, there were 441 posts of PGT Commerce.



LPA No.641 of 2024

ii) The appellant-writ petitioner applied for the post of PGT Commerce as a general category candidate and was called for interview/*viva-voce* on January 04, 2013.

iii) The final result was declared on April 03, 2013 and the appellant's name did not feature in the Final Select list as the last selected candidate in the general category secured 56.60 marks (28.60 marks for academic qualification + 28 marks for *viva-voce*), whereas the appellant obtained 50.48 marks (38.48 marks for academic qualification and 12 marks for *viva-voce*).

3. Learned counsel appearing on behalf of the appellant submitted that the appellant was a highly meritorious candidate academically and had about 15 years of experience in teaching the subject of commerce in college/School. Therefore, awarding him only 12 out of 33 marks in the interview/*viva-voce* was arbitrary, improper and needed re-assessment. The last selected candidate/4th respondent, despite being academically inferior than the appellant, was awarded 28 marks out of 33 marks in the interview. Therefore, it was incumbent upon the respondent-Board to re-interview and re-assess the appellant.

4. Learned counsel for the fourth respondent as well as the learned State counsel relying on their reply/written statement filed before the writ Court, contended that the appellant's petition was not maintainable since neither the criteria for selection had been challenged nor any *mala fide* on the part of respondents had ever been alleged. The entire selection process had been carried out fairly and transparently and that the marks had been awarded to the selected candidates strictly as per the criteria.



LPA No.641 of 2024

5. The Hon'ble Single Judge held that the appellant had duly participated in the selection process and failed to qualify. After being declared unsuccessful, he had preferred to file his petition alleging therein that his merit had not been correctly assessed in the interview. He held that the written statement filed on behalf of the Board clearly established that the appellant's candidature was duly assessed and that he was awarded marks as per the stipulated criteria.

6. The writ Court did not accept the argument advanced by learned senior counsel appearing on behalf of the petitioner-appellant on the issue that looking at the academic record as well as the teaching experience of the appellant over the last years, the petitioner-appellant would have ought to be granted more marks in the interview. It held that even if the candidate was more experienced and academically better on the basis of higher qualification or higher percentage of marks but that did not necessarily lead to the conclusion that he would better perform in the interview or that his skills, intelligence, general awareness and performance would be better than a candidate with academically lower marks. No presumption could be drawn in favour of the candidates with higher qualification that they would also perform better in the interview.

7. Furthermore, it was held that there was no *mala fide* alleged in the process of selection or against the members of Selection Committee. The details of the marks awarded to the candidates for academics and interview as reproduced in the writ petition did not indicate that there was a pattern of awarding higher marks in interview to the candidates who were academically far lower in the merit, so that they could be selected.



LPA No.641 of 2024

Moreover, none of the selected candidates, other than respondent No.4, were impleaded as parties to the petition.

8. Consequently, the Hon'ble Single Judge held that there was nothing wrong with the assessment of the appellant's candidature and dismissed the writ petition.

9. This Court has heard learned counsel for the appellant and perused the material on record.

10. Admittedly, no *mala fide* in the selection process was alleged and no pattern could be established from the Select list of candidates showing that the candidates with substantially lower academic score were given higher marks in the interview for the purpose of their selection. The selection criteria has also not been challenged by the appellant. The appellant has only sought to challenge the subjective assessment of the interview Board in assessing the appellant during the interview/*viva-voce*.

11. It is a well settled preposition of law that after participating in a selection process an unsuccessful candidate cannot turn around and challenge the selection process.

12. A beneficial reference may be made to Apex Court judgment in "*Madan Lal and others v. State of J & K and others*" (1995) 3 *Supreme Court Cases* 486. Relevant extract thereof is reproduced herein below:

“xxx

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*



LPA No.641 of 2024

*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 and Ors.**, (AIR 1986 SC 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.*

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.*

xxx”

13. In a recent judgment in “**Rekha Sharma v. Rajasthan High Court, Jodhpur and Another**” 2024 SCC Online SC 2109, the Apex Court again reiterated as under:



LPA No.641 of 2024

“xxx

16. *As well settled, the candidates who consciously took part in the process of selection cannot be permitted to question the advertisement or the methodology adopted by the respondents for making selection, on their having been declared as unsuccessful in the Preliminary Examinations. The appellants after they having found that their names do not appear in the list of successful candidates of Preliminary Examination, could not have questioned the result on the ground that the respondents had not declared the cut off marks for the Person with benchmark disabilities. As stated earlier, the respondents have declared the cut off marks for the persons falling under Compartmentalised Horizontal Reservation and not for the Overall Horizontal Reservation under which the appellants fall. Such action could neither be said to be arbitrary nor violative of Article 14, 16 and 21 of the Constitution of India.*

xxx”.

14. In view of the discussion made hereinabove, the present letters patent appeal (LPA) is dismissed.

15. Pending applications, if any, also stands disposed of.

(DEEPAK SIBAL)
JUDGE

(LAPITA BANERJI)
JUDGE

NOVEMBER 25, 2024
Shalini

Whether speaking/reasoned :	Yes
Whether reportable :	Yes