

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

103

CM-465-CWP-2024 in/&
CWP-26875-2018
Date of Decision :25.01.2024

Jitender

...Petitioner

Versus

State of Haryana and another

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Amit Parashar, Advocate for the petitioner.

Mr. Harish Nain, AAG, Haryana.

* * *

Harsimran Singh Sethi, J. (Oral)

CM-465-CWP-2024

Present application has been filed for recalling the order dated 08.01.2024 passed by this Court by which, the main writ petition was dismissed for non-prosecution.

Keeping in view the averments made in the application, which are duly supported by an affidavit, application is allowed. Order dated 08.01.2024 passed by this Court is recalled and the main writ petition is ordered to be restored to its original number and status and is taken up for hearing today itself.

CWP-26875-2018

1. In the present petition, grievance of the petitioner is that while conducting selection to the post of Labour Inspector, which was advertised

by the respondents vide advertisement No.05/2016 (Annexure P-1), the petitioner has not been selected only on the ground that he secured less marks in the interview and his total aggregate is less than respondent No.3.

2. Learned counsel for the petitioner argues that the petitioner has secured higher marks in the written examination hence, only giving him 03 marks, out of total 25 marks in the interview is totally arbitrary and illegal.

3. Learned counsel for the respondents submits that though, no reply has been filed by the respondent-State but grant of marks by the interview committee is within their domain and there is no malafide attached to oust the petitioner from the zone of consideration and this Court will not sit in appeal over the grant of marks to the petitioner by the interview committee.

4. I have heard learned counsel for the parties and have gone through the record with their able assistance.

5. Once, it is a settled principle of law that selection was to be made on the basis of the marks secured in the written examination as well as in the interview and it is also a conceded position that the petitioner has secured less marks in aggregate than respondent No.3 hence, respondent No.3 is to be treated deserving candidate over and above the petitioner.

6. The argument raised by the learned counsel for the petitioner that the petitioner has been given only 03 marks out of total 25 marks in the interview cannot be entertained by this Court as the said marks was given by the expert committee keeping in view the performance of the petitioner.

7. Nothing has come on record that there was any malafide due to which, the petitioner has been given less marks by the interview committee.

8. In the absence of any malafide, this Court will not go into the

same especially, when no one has been made party by name in the present petition, the said allegation even if, being attributed to the selection committee, cannot be entertained.

9. Further, as per the settled principle of law settled by the Hon'ble Supreme Court of India in writ petition (civil) No.546-1994 titled as Madan Lal and others vs. State of Jammu & Kashmir decided on 06.02.1995, once, the candidate already appeared in the interview, the said candidate cannot challenge the selection on the ground that marks have been given to him/her in the interview by adopting unfair process. Relevant paragraphs of the judgment are as under:-

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 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.'"

Keeping in view the facts and circumstances recorded hereinbefore, coupled with the settled principle of law, no ground for interference is made out by this Court and the present writ petition is accordingly dismissed.

January 25, 2024
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No