

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

(110)

CWP-28129-2023

Date of Decision : January 24, 2024

Priyank Kansal**.. Petitioner****Versus****Haryana Public Service Commission and another****.. Respondents****CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI**

Present: Mr. Karamveer Singh Banyana, Advocate, for the petitioner.

Ms. Harpriya Khaneka, Advocate, for respondent No.1-HPSC.

HARSIMRAN SINGH SETHI J. (ORAL)

1. In the present writ petition, the grievance being raised by the petitioner is that the selection which has been made to the post of Assistant Scientist (Server and Data Security Management) is bad in law as respondent No.2 who had secured lesser marks in the Subject Knowledge Test, has been selected by giving her more marks in the interview, which act is totally arbitrary and illegal.

2. Keeping in view the service of advance copy of petition, Ms. Harpriya Khaneka, Advocate has appeared on behalf of respondent No.1-Commission.

3. Learned counsel for respondent No.1 submits that in the interview, the candidates have been solely evaluated by the subject experts keeping in view their performance in the interview and merely that the

petitioner had higher marks in the Subject Knowledge Test, the same cannot be treated that the petitioner did well over and above respondent No.2 even while appearing in the viva voice.

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

5. As per the settled principle of law, the marks are to be given to the candidates on the basis of criteria evolved. As per the conceded fact, the criteria fixed, selection was to be made on the basis of a written examination as well as viva voice. The candidate who secured more marks while combining the marks secured in the written examination and viva voice, is to be treated as a selected candidate.

6. Merely that the petitioner has secured more marks in the written examination will not give a presumption that he is better than respondent No.2. Once, the petitioner as well as respondent No.2 has been evaluated by the experts and experts have come to the conclusion that respondent No.2 is a better qualified candidate as compared to the petitioner, this Court cannot sit in an appeal over the decision of the expert to select respondent No.2.

7. Further, in case the claim of the petitioner is that the petitioner had secured more marks in the written examination hence, he should be given preference over respondent No.2 is accepted, this will mean that viva voice should be rendered as meaningless and should not be of any significance, which argument of the learned counsel for the petitioner cannot be accepted. Once, as per the criteria, the total marks secured by a candidate, is to be taken into account for selecting, the plea being raised by the petitioner cannot be accepted.

8. Further, as per the judgment of the Hon'ble Supreme Court of

India in ***Writ Petition (Civil) No.546 of 1994 titled as Madan Lal and others vs. State of Jammu and Kashmir, decided on 06.02.1995***, a candidate who has already participated in the selection process, cannot be allowed to file a writ petition or challenge the selection on the ground that the marks given in the interview are less as compared to other candidates. The relevant paragraphs of the said 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 (-sic-) marks obtained in the written test, to be eligible to be called for oral interview. Upto this state 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 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.

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 re-assess the relative 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 other 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 uncertainly not acting as a court of appeal over the assessment made by such an expert committee.”

9. Keeping in view the facts and law mentioned hereinbefore, no ground is made out for any interference by this Court.

10. Dismissed.

January 24, 2024

harsha

(HARSIMRAN SINGH SETHI)

JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No