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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **LPA 392/2024**

DR MANU BANGA

.....Appellant

Through: Mr. Rishabh Kapur and
Mr. Tanmay Gupta, Advs.

versus

**INDIRA GANDHI DELHI TECHNICAL
UNIVERSITY FOR WOMEN**

.....Respondent

Through: Mrs. Avnish Ahlawat, Standing
Counsel with Mr. Nitesh Kumar Singh,
Ms. Laavanya Kaushik, Ms. Aliza Alam and
Mr. Mohnish Sehrawat, Advs.

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

HON'BLE DR. JUSTICE SUDHIR KUMAR JAIN

JUDGMENT (ORAL)

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18.10.2024

C. HARI SHANKAR, J.

1. This Letters Patent Appeal assails judgment dated 20 March 2024 passed by learned Single Judge of this Court in WP (C) 4224/2024¹.

2. Having heard learned Counsel and with their consent, the writ petition is being taken up for final disposal.

¹ **Dr. Manu Banga v Indira Gandhi Delhi Technical University for Women**



3. The appellant is suffering from 79% disability in the right upper limb, which qualifies as “benchmark disability” within the meaning of the Rights of Persons with Disabilities Act, 2016². The appellant participated in an examination conducted by the respondent-University for the post of Assistant Professor, for which the notification inviting applications was issued by the University on 27 February 2023.

4. A total of 23 vacancies were advertised, with two unreserved vacancies in the discipline of Information Technology and four unreserved vacancies in the discipline of Computer Science Engineering, with which the appellant is concerned. 3 of the 23 posts were reserved for persons with benchmark disabilities in accordance with Section 34 of the RPWD Act.

5. The appellant applied on 21 March 2023. He cleared the written test and was called for presentation and interview, conducted by the University.

6. The appellant represented to the University on 7 December 2023. Among other grievances, the appellant also complained against non-consideration of his journal paper but the University did not respond favourably. The results of the selection were declared by the University on 8 January 2024. 19 candidates were selected. The appellant’s name did not figure in the final list. Aggrieved thereby, the appellant approached this Court by way of WP (C) 4224/2024.

² “the RPWD Act”, hereinafter



According to the appellant, he was entitled to be selected and appointed against one of the vacancies reserved for persons with disabilities.

7. The learned Single Judge has dismissed the writ petition on the ground that a person who has participated in the selection process is precluded from challenging the notification or the process *or even the final result of the selection process*. Reliance has been placed, by the learned Single Judge, on the judgment of the Supreme Court in **Ashok Kumar v State of Bihar**³ and of this Court in **Karan Singh Meena v Registrar General, Delhi High Court**⁴.

8. We regret our inability to agree with the learned Single Judge.

9. **Ashok Kumar** deals with the issue of estoppel, in such cases, in some detail. The following paragraphs from the decision merit reproduction:

“13. The law on the subject has been crystallised in several decisions of this Court. In **Chandra Prakash Tiwari v Shakuntala Shukla**⁵, this Court laid down the principle that when a candidate appears at an examination without objection and is subsequently found to be not successful, *a challenge to the process is precluded*. The question of entertaining a petition challenging an examination would not arise where a candidate has appeared and participated. He or she cannot subsequently turn around *and contend that the process was unfair or that there was a lacuna therein*, merely because the result is not palatable. In **Union of India v S. Vinodh Kumar**⁶, this Court held that:

³ (2017) 4 SCC 357

⁴ 2022 SCC OnLine Del 3098

⁵ (2002) 6 SCC 127

⁶ (2007) 8 SCC 100



“18. It is also well settled that those candidates who had taken part in the selection process *knowing fully well the procedure laid down therein were not entitled to question the same.* (See **Munindra Kumar v Rajiv Govil**⁷ and **Rashmi Mishra v M.P. Public Service Commission**⁸)”

14. The same view was reiterated in **Amlan Jyoti Borooah v State of Assam**⁹ wherein it was held to be well settled that the candidates *who have taken part in a selection process knowing fully well the procedure laid down therein are not entitled to question it* upon being declared to be unsuccessful.

15. In **Manish Kumar Shahi v State of Bihar**¹⁰, the same principle was reiterated in the following observations:

“16. We also agree with the High Court that after having taken part in the process of selection knowing fully well that more than 19% marks have been earmarked for viva voce test, *the petitioner is not entitled to challenge the criteria or process of selection.* Surely, if the petitioner's name had appeared in the merit list, he would not have even dreamed of challenging the selection. The petitioner invoked jurisdiction of the High Court under Article 226 of the Constitution of India only after he found that his name does not figure in the merit list prepared by the Commission. This conduct of the petitioner clearly disentitles him from questioning the selection and the High Court did not commit any error by refusing to entertain the writ petition. Reference in this connection may be made to the judgments in **Madan Lal v State of J & K**¹¹, **Marripati Nagaraja v State of A.P.**¹², **Dhananjay Malik v State of Uttaranchal**¹³, **Amlan Jyoti Borooah v State of Assam** and **K.A. Nagamani v Indian Airlines**¹⁴.”

16. In **Vijendra Kumar Verma v Public Service Commission**¹⁵, candidates who had participated in the selection process *were aware that they were required to possess certain specific qualifications in computer operations. The appellants had appeared in the selection process and after participating in the interview sought to challenge*

⁷ (1991) 3 SCC 368

⁸ (2006) 12 SCC 724

⁹ (2009) 3 SCC 227

¹⁰ (2010) 12 SCC 576

¹¹ (1995) 3 SCC 486

¹² (2007) 11 SCC 522

¹³ (2008) 4 SCC 171

¹⁴ (2009) 5 SCC 515

¹⁵ (2011) 1 SCC 150



the selection process as being without jurisdiction. This was held to be impermissible.

17. In **Ramesh Chandra Shah v Anil Joshi**¹⁶, candidates who were competing for the post of Physiotherapist in the State of Uttarakhand participated in a written examination held in pursuance of an advertisement. This Court held that if they had cleared the test, the respondents would not have raised any objection to the selection process or to the methodology adopted. Having taken a chance of selection, it was held that the respondents were disentitled to seek relief under Article 226 and would be deemed to have waived their right to challenge the advertisement or the procedure of selection. This Court held that:

“18. It is settled law that a person who consciously takes part in the process of selection cannot, thereafter, turn around and question the method of selection and its outcome.”

18. In **Chandigarh Admn. v Jasmine Kaur**¹⁷, it was held that a candidate who takes a calculated risk or chance by subjecting himself or herself to the selection process cannot turn around and complain that the process of selection was unfair after knowing of his or her non-selection. In **Pradeep Kumar Rai v Dinesh Kumar Pandey**¹⁸, this Court held that:

“17. Moreover, we would concur with the Division Bench on one more point that the appellants had participated in the process of interview and not challenged it till the results were declared. There was a gap of almost four months between the interview and declaration of result. However, the appellants did not challenge it at that time. This, it appears that only when the appellants found themselves to be unsuccessful, they challenged the interview. This cannot be allowed. The candidates cannot approbate and reprobate at the same time. Either the candidates should not have participated in the interview and challenged the procedure or they should have challenged immediately after the interviews were conducted.”

This principle has been reiterated in a recent judgment in **Madras Institute of Development Studies v K. Sivasubramaniyan**¹⁹.

¹⁶ (2013) 11 SCC 309

¹⁷ (2014) 10 SCC 521

¹⁸ (2015) 11 SCC 493

¹⁹ (2016) 1 SCC 454



19. In the present case, regard must be had to the fact that the appellants were clearly on notice, when the fresh selection process took place *that written examination would carry ninety marks and the interview, ten marks*. The appellants participated in the selection process. Moreover, two other considerations weigh in balance. The High Court noted in the impugned judgment that the interpretation of Rule 6 was not free from vagueness. There was, in other words, no glaring or patent illegality in the process adopted by the High Court. There was an element of vagueness about whether Rule 6 which dealt with promotion merely incorporated the requirement of an examination provided in Rule 5 for direct recruitment to Class III posts or whether the marks and qualifying marks were also incorporated. Moreover, no prejudice was established to have been caused to the appellants by the 90:10 allocation.”

10. Estoppel presumes knowledge, and acquiescence. The guiding principle, when assessing whether the unsuccessful candidate in the interview or selection is, or is not, proscribed from launching a challenge after the results are declared is, therefore, whether the challenge is *against an aspect of the selection process of which he was aware before participating in the selection*. In a case where the challenge is against the process of interview – of which, naturally, the candidate would not be aware until he undertakes the interview – the challenge has to be launched *immediately after undertaking the interview*. Once the results are announced, there is no absolute proscription against the candidate challenging his non-selection, but the scope of challenge is considerably circumscribed. The candidate cannot, then, question either the rules or procedure governing the selection, or the manner in which the interview was conducted or, essentially, *any aspect of which he was aware before the results were declared*. The candidate, nonetheless, retains the right to complain against his non-selection on the basis of some error in the actual outcome. *It remains open, for example, for the candidate to contend*



that, given his performance, or given the manner in which vacancies were to be allocated, or given the principle of reservation that applies, he ought to have been selected, or to challenge the selection, instead, of another. These being aspects of which the candidate could not possibly have been aware before the results of the selection were declared, the candidate cannot be estopped from challenging his non-selection. If, however, the challenge is predicated on a feature of the Rules, or the selection procedure, or the manner of distribution of vacancies, or the applicable reservation policy, or the allocation of marks, or the procedure of interview, or the manner in which the interview as conducted, or, for that matter, any aspect of which the candidate was aware before the results of the selection were announced, the challenge is proscribed.

11. The *basis of the challenge*, therefore, is the guiding test to assess whether the candidate is, or is not, estopped from raising it.

12. In the present case, the challenge by the appellant is not to the rules or the manner of selection or the process of selection, but the manner in which, consequent on selection, appointments have been made against the vacancies reserved for persons with benchmark disabilities. Besides, the challenge is against the actual appointments *vis-à-vis* the available vacancies, and not on the distribution of vacancies per se.

13. Inasmuch as the appellant could not have possibly raised such a challenge before the outcome of the selection was known, no estoppel



can apply against him. Indeed, before the results are announced, such a challenge could not have been raised at all.

14. We regret our inability, therefore, to agree with the learned Single Judge in his view that the appellant was estopped from raising the challenge ventilated in the writ petition.

15. Accordingly, the impugned judgment dated 20 March 2024 of the learned Single Judge is quashed and set aside. WP (C) 4224/2024 stands remanded to the learned Single Judge for consideration afresh in accordance with law after hearing both sides.

16. In order to expedite matters, both sides shall appear before the learned Single Judge on 4 November 2024.

17. On 17 May 2024, when this appeal had come up for the first time, the Coordinate Division Bench had observed in para 12, that the interest of the appellant would be safeguarded if the appointment of the last candidate in the merit list was made subject to the outcome of the present appeal. Following the said dispensation, the appointment of the last candidate in the merit list in the disciplines of Computer Science Engineering and Information Technology, shall remain subject to the outcome of the writ petition before the learned Single Judge.

18. As it may become necessary for the appellant to implead the said candidates, Mr. Singh, learned Counsel for the respondent has



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agreed to intimate the name and particulars of the said candidates to the appellant within two days. On the needful being done, the appellant would be at liberty to implead the said candidates in the writ petition.

19. The appeal stands allowed in the aforesaid terms with no order as to costs.

C.HARI SHANKAR, J.

DR. SUDHIR KUMAR JAIN, J.

OCTOBER 18, 2024/N

Click here to check corrigendum, if any

Signature Not Verified

Digitally Signed
By: HARVINDER KAUR
BHATIA
Signing Date: 21.10.2024 18:15:10 LPA 392/2024