IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWPOA No.4669 of 2019
Reserved on: 10.04.2026
Decided on: 27.04.2026

Karan Sharma & another ...Petitioners

Versus

State of HP & another ...Respondents

Coram
Hon'ble Mr. Justice Jiya Lal Bhardwaj, Judge
Whether approved for reporting?[1] *Yes*

For the petitioners: Ms. Reeta Hingmang, Advocate.

For the respondents: Mr. Rupinder Singh Thakur and Mr. Amandeep Sharma, Additional Advocates General, for respondent No.1.

Mr. Shivank Singh Panta, Advocate, for respondent No.2.

Jiya Lal Bhardwaj, Judge

The petitioners by way of present petition have prayed for the following substantive reliefs:-

> *"(i) That the respondents may kindly be directed to declare the petitioners successful on the basis of the marks obtained by them in the written examination itself and grant them appointment as Asst. manager (FO) and (F&D) respectively being topper and second topper in the merit list of their respective categories after setting aside the complete process of interview held on 19.06.2014/11/05/2015 for the post of Asstt.*

[1] *Whether reporters of Local Papers may be allowed to see the judgment?*

Manager (FAB) and Assistant Manager (FO).

(ii) That the communication dated 23/09/2015 (Annexure P11), whereby petitioner no.1 has been not recommended for the post in question, may kindly be set aside with the further direction to respondent: corporation to conduct fresh interview.

(iii) That the respondent-Corporation may kindly be directed to not to issue fresh advertisement for the post of Assistant Manager (FO) and (F&B).

(iv) That in alternative this Hon'ble Court may constitute independent interview committee to conduct fresh interview for the post of Assistant Manager (FO) and (F&B) in terms of judgment dated 06/04/2015 passed by Hon'ble High Court in CWP no. 9554/2014."

2. Shorn of unnecessary details, the key facts of the case are that respondent No.2-Corporation had issued an advertisement dated 12.07.2012, inviting applications to fill up various posts of Managers, Assistant Manager (F&B), Assistant Manager (F.O.), Trainees and Accounts Clerks. Petitioners No.1 and 2 being eligible had applied respectively for the post(s) of Assistant Manager (FO) and Assistant Manager (F&B). They have appeared in the written test held on 14.02.2014. After declaration of the result, they were called for the interview which was held on 19.06.2014. Both the petitioners appeared before the Selection Committee, who conducted the interview on 19.06.2014. It has been averred that both of them did well in the interview and were at Serial No.1 and 2 respectively, in their

respective categories. They were expecting to be selected for the posts. However, respondent No.2-Corporation did not declare the result qua the posts applied for by them, whereas, the result of other categories was declared. On inquiry, it was transpired that respondent No.2 had already issued the list of selected candidates for contractual appointment with respect to various categories i.e. Account Clerks, Junior Engineer (Civil), Trainee (Waiting) and Manager (Food & Beverages) and not for the posts to which the petitioners had applied.

3. Petitioner No.1 feeling aggrieved by the action of respondent No.2-Corporation preferred a writ petition bearing CWP No.9554 of 2014, titled, ***Karan Sharma vs. State of H.P. & another,*** which came to be disposed of on 06.04.2015, directing respondent No.2-Corporation to conduct interview afresh, for all the eligible candidates on a date to be intimated to them, by a newly constituted interviewing board/selection committee and the proceedings be returned in a sealed cover.

4. After the directions being issued by this Court, the interview of petitioner No.1 was conducted to the post of Assistant Manager (FO) on 11.05.2015, by the committee

constituted for the purpose and his name had not been recommended for the post applied.

5. It has been averred in the earlier petition that in the petition instituted by petitioner No.1, which came to be disposed of on 06.04.2015, it was contended that the interview committee had not only deprived him of even the bare minimum marks, but also decided not to recommend him for appointment against the post of Assistant Manager (FO) despite his having obtained 80 marks out of 100 marks in the written test.

6. The action on the part of respondent No.2-Corporation in virtually declaring the petitioners unsuitable for consideration for the posts of Assistant Manager (FO) and (F&B) is replete with the malice and prejudice against the petitioners particularly on account of petitioner No.1 having visited this Court earlier challenging the outcome of the interview. Petitioner No.2 had diligently chased his case right from the word go and had represented respondent No.2-Corporation in wake of the judgment to conduct the interview for the post also and as such, he also deserves the same treatment as given to petitioner No.1. Respondent No.2-Corporation cannot deprive petitioner No.2 of his

legitimate relief of consideration on the same grounds as have been raised by petitioner No.1. The action on the part of respondent No.2-Corporation in not recommending their names for the post of Assistant Manager (FO) and Assistant Manager (F&B) despite being most meritorious, is illegal, discriminatory, arbitrary and deserves to be deprecated.

7. Respondent No.2-Corporation filed reply to the petition and averred that the petitioners have not disclosed any valid and cogent cause of action against respondent No.2-Corporation. The allegations, submissions and/or insinuations made by the petitioners are specific and vehemently denied. The petitioners are guilty of *suppressio veri* as well as *suggestio falsi*. The petitioners have not approached the Court with clean hands. Petitioner No.1 had earlier filed the writ petition claiming therein his appointment against the post of Assistant Manager (FO), which petition was registered as CWP No.5519 of 2014, titled, ***Karan Sharma vs. Himachal Pradesh Tourism Development Corporation Ltd. and another,*** and the same was withdrawn on 05.01.2015. Subsequently, petitioner No.1 had filed another petition which came to be registered as CWP No.9554 of 2014, titled, ***Karan Sharma***

vs. State of H.P. & another, again claiming appointment/selection for the post of Assistant Manager (FO) being the topper in the merit list, which was disposed of on 06.04.2015 and in compliance with the said directions, the new interviewing committee was constituted and the petitioner No.1 was interviewed on 11.05.2015, by the newly constituted interviewing committee. The interviewing committee found none of the candidates eligible and thus recommended none of the candidate for appointment. The petitioners do not have any vested or indefeasible right, to be selected or appointed against the said posts. So far petitioner No.2 is concerned, the belated participation of him at this stage is nothing but an afterthought and an attempt to lend unwarranted support to the case of petitioner No.1 and, therefore, deserves to be viewed with circumspection by this Court. In all, fifteen candidates had appeared in the personal interview for the post of Assistant Manager (F&B) and (FO), which took place on 19.06.2014 and none was found suitable as per the recommendations of the Selection Committee, specifically constituted to conduct the personal interviews. The petitioners have only right to be considered and respondent No.2-Corporation is

under no legal duty to fill up all or any of the vacancies. To appear in the interview does not advance the right to the petitioners to be appointed and selected against the post for which they have applied. In the fresh interview conducted on 11.05.2015, for the post of Assistant Manager (FO), the newly constituted committee considered the overall poor knowledge of the candidates and decided not to recommend any candidate, appearing in the interview, to be appointed for the post of Assistant Manager (FO). Petitioner No.1 was communicated about the result of the personal interview that he was not found fit and suitable for the post of Assistant Manager (FO) by the Selection Committee and, therefore, he has no right to be selected against the post.

8. I have heard the learned counsel for the parties and also gone through the record carefully.

9. No doubt in the earlier proceedings when petitioner No.1 had approached this Court, a direction was given by this Court to conduct the interview afresh for all the eligible candidates for the post of Assistant Manager (FO). Petitioner No.2 had never come to this Court, when on earlier occasion, the Selection Committee had not

recommended any candidate for the post of Assistant Manager (F&B). As per the interview conducted on 19.06.2014, he staked his claim for the fresh interview to the post of Assistant Manager (F&B) only after the directions given by this Court in the earlier writ petition filed by petitioner No.1, which came to be disposed of on 16.04.2015, when this Court had only directed to conduct fresh interviews for all the eligible candidates to the post of Assistant Manager (FO) and not for the post of Assistant Manager (F&B).

10. Respondent No.2-Corporation in compliance with the direction given by this Court had conducted the interview for the post of Assistant Manager (FO), but the new Selection Committee had also not found any of the suitable candidate for appointment to the post of Assistant Manager (FO) and since petitioner No.1 has not impleaded any of the person by name in the present proceedings, the allegations of malafide cannot be accepted.

11. The Constitution Bench of the Hon’ble Supreme Court in in ***Shankarsan Dash vs. Union of India*** **(1991) 3 SCC 47,** has held that the candidate has only right of consideration and the successful candidate does not acquire

2026:HHC:13597

an indefeasible right to be appointed. Further the advertisement issued merely amounts to an invitation to qualified candidates to apply for recruitment and on their selection, they do not acquire any right to the post, unless the relevant recruitment rules so indicate, the State is under no legal duty to follow up any of the vacancies. The relevant para of the judgment reads as under:-

> *7. It is not correct to say that if a number of vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates acquire an indefeasible right to be appointed which cannot be legitimately denied. Ordinarily the notification merely amounts to an invitation to qualified candidates to apply for recruitment and on their selection they do not acquire any right to the post. Unless the relevant recruitment rules so indicate, the State is under no legal duty to fill up all or any of the vacancies. However, it does not mean that the State has the licence of acting in an arbitrary manner. The decision not to fill up the vacancies has to be taken bona fide for appropriate reasons. And if the vacancies or any of them are filled up, the State is bound to respect the comparative merit of the candidates, as reflected at the recruitment test, and no discrimination can be permitted. This correct position has been consistently followed by this Court, and we do not find any discordant note in the decisions in State of Haryana v. Subhash Chander Marwaha, Neelima Shangla v. State of Haryana, or Jatendra Kumar and Others v. State of Punjab.*

12. In the present case, after the direction given by this Court, petitioner No.1 was interviewed for the post, but the Selection Committee did not find him suitable to be offered the appointment and thus, he cannot stake any

claim to offer him the appointment.

13. The Hon'ble Supreme Court has time and again held that the judicial review to challenge the selection process is very limited inasmuch as once the person has participated in the selection process, he cannot turn around and lay challenge. The Hon'ble Supreme Court in ***Dr. G. Sarana vs. University of Lucknow and others,*** **(1976) 3 SCC 585**, has held that the candidate after appearing in the interview and having not been selected, cannot raise plea of bias against the experts and in the present case too, petitioner No.1 having been participated in the interview before the newly constituted committee cannot raise bias against the Selection Committee, more particularly when he has not chosen to implead said person as party respondents in the present petition. The relevant para of the judgment reads as under :-

> *"15. We do not, however, consider it necessary in the present case to go into the question of the reasonableness of bias or real likelihood of bias as despite the fact that the appellant knew all the relevant facts, he did not before appearing for the interview or at the time of the interview raise even his little finger against the constitution of the Selection Committee. He seems to have voluntarily appeared before the committee and taken a chance of having a favourable recommendation from it. Having done so, it is not now open to him to turn round and question the constitution of the committee."*

2026:HHC:13597

14. The aforesaid view has again been reiterated by the Hon'ble Supreme Court in ***D. Sarojakumari vs. R. Helen Thilakom and others,*** **(2017) 9 SCC 478,** and the relevant paras reads as under:-

> *"5. In G. Sarna v. University of Lucknow[3], the petitioner after appearing in the interview for the post of Professor and having not been selected pleaded that the experts were biased. This Court did not permit the petitioner to raise this issue and held as follows : (SCC p. 591, para 15)*
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> > *"15. We do not, however, consider it necessary in the present case to get into the question of the reasonableness of bias or real likelihood of bias as despite the fact that the appellant knew all the relevant facts, he did not before appearing for the interview or at the time of the interview raise even his little finger against the constitution of the Selection Committee. He seems to have voluntarily appeared before the committee and taken a chance of having a favourable recommendation from it. Having done so, it is not now open to him to turn round and question the constitution of the committee."*
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> *6. In Madan Lal v. State of J&K, the petitioner laid challenge to the manner and method of conducting viva voce test after they had appeared in the same and were unsuccessful. This Court held as follows : (SCC p.493, para9)*
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> > *"9....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, 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."*
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> *7. In Manish Kumar Shahi v. State of Bihar, this Court held as follows : (SCC p. 584, para 16)*

> *"16....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."*
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> *8. In Ramesh Chandra Shah v. Anil Joshi the petitioners took part in the process of selection made under the general Rules. Having appeared in the interview and not being successful they challenged the method of recruitment itself. They were not permitted to raise such an objection. This Court held as follows : (SCC p. 320, para 24)*
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> *"24. In view of the propositions laid down in the above noted judgments, it must be held that by having taken part in the process of selection with full knowledge that the recruitment was being made under the General Rules, the respondents had waived their right to question the advertisement or methodology adopted by the Board for making selection and the learned Single Judge and the Division Bench of the High Court committed grave error by entertaining the grievance made by the respondents."*
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> *9. The same view has been taken in Madras Institute of Development Studies v. K. Sivasubramaniyan.*
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> *10. The Kerala High Court did not note the above-mentioned judgments and ignored the well-settled position of law in rejecting the specific plea raised by the appellant herein that the appellant could not raise the issue that no direct recruitment should have been conducted once she had applied for and taken part in the selection process by direct recruitment."*

15. The function of the Courts to hear appeals over the decision of Selection Committee and further scrutinize the relative merits of the candidates is very limited and whether a candidate is fit for a particular post or not has to

be decided by the duly constituted Selection Committee, which has the expertise on the subject. In this regard, a reference is made to the judgment passed by the Hon'ble Supreme Court in ***Tajvir Singh Sodhi and others vs. State of Jammu and Kashmir and others,*** **(2023) 17 SCC 147,** and the relevant paras read as under:-

> ***"Selection process for public employment: Interference by courts***
> *31. Before proceeding further, it is necessary to preface our judgment with the view that courts in India generally avoid interfering in the selection process of public employment, recognising the importance of maintaining the autonomy and integrity of the selection process. The courts recognise that the process of selection involves a high degree of expertise and discretion and that it is not appropriate for courts to substitute their judgment for that of a Selection Committee. It would be indeed, treading on thin ice for us if we were to venture into reviewing the decision of experts who form a part of a Selection Board. The law on the scope and extent of judicial review of a selection process and results thereof, may be understood on consideration of the following case law.*
> *32. In Dalpat Abasaheb Solunke v. B.S. Mahajan, this Court clarified the scope of judicial review of a selection process, in the following words: (SCC pp. 309-10, para 12)*
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> > "*12. It is needless to emphasise that it is not the function of the court to hear appeals over the decisions of the Selection Committees and to scrutinise the relative merits of the candidates. Whether a candidate is fit for a particular post or not has to be decided by the duly constituted Selection Committee which has the expertise on the subject. The court has no such expertise. The decision of the Selection Committee can be interfered with only on limited grounds, such as illegality or patent material irregularity in the constitution of the Committee or its procedure vitiating the selection, or proved mala fides affecting the selection, etc.*"

33. In a similar vein, in Deptt. Of Health & Family Welfare v. Anita Puri, this Court observed as under as regards the sanctity of a selection process and the grounds on which the results thereof may be interfered with: (SCC p. 287. para 9)

> *"9. It is too well settled that when a selection is made by an expert body like the Public Service Commission which is also advised by experts for which the selection is to be made, the courts should be slow to interfere academic qualification in with the opinion expressed by experts unless allegations of mala fides are made and established. It would be prudent and safe for the courts to leave the decisions on such matters to the experts who are more familiar with the of a candidate for a specified post after giving due consideration to all the problems they face than the courts. If the expert body considers suitability relevant factors, then the court should not ordinarily interfere with such selection and evaluation."*

34. This position was reiterated by this Court in M.V. Thimmaiah v. UPSC, in the following words: (SCC pp. 131 & 135-36, paras 21 & 30)

> *"21. Now, comes the question with regard to the selection of the candidates. Normally, the recommendations of the Selection Committee cannot be challenged except on the ground of mala fides or serious violation of the statutory rules. The courts cannot sit as an appellate authority to examine the recommendations of the Selection Committee like the court of appeal. This discretion has been given to the Selection Committee only and courts rarely sit as a court of appeal to examine the selection of the candidates nor is the business of the court to examine each candidate and record its opinion.*
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> *30. We fail to understand how the Tribunal can sit as an appellate authority to call for the personal records and constitute Selection Committee to undertake this exercise. This power is not given to the Tribunal and it should be clearly understood that the assessment of the Selection Committee is not subject to appeal either before the Tribunal or by the courts. One has to give credit to the Selection Committee for making their assessment*

> *and it is not subject to appeal. Taking the overall view of ACRs of the candidates, one may be held to be very good and another may be held to be good. If this type of interference is permitted then it would virtually amount that the Tribunals and the High Courts have started sitting as Selection Committee or act as an appellate authority over the selection. It is not their domain, it should be clearly understood, as has been clearly held by this Court in a number of decisions.*"

16. The argument raised by the learned counsel for the petitioners that in case of all other categories, qua which the advertisement was also issued vide Annexure P-1, the persons have been offered the appointment, does not advance the case of the petitioners for the simple reason that once the Selection Committee has not found any person suitable for offering the appointment to the posts applied by them, this Court cannot sit as in appeal and interfere with the recommendations as per the law declared by the Hon'ble Supreme Court. It is not disputed by learned counsel for the petitioners that petitioner No.2 had not earlier approached this Court when he was not recommended for the post and now after the direction given by this Court in the writ petition instituted by petitioner No.1, he cannot rake up the issue.

17. Learned counsel for the petitioners vehemently argued that the action on the part of the respondents in not

offering the appointment to the petitioners is arbitrary and unreasonable and pressed into service the judgment passed by the Hon'ble Supreme Court in ***Bishnu Biswas and others vs. Union of India and others,*** **(2014) 5 SCC 774,** to contend that since the petitioners have not been awarded the marks as per the marks obtained by them in the written test, the action on the part of the respondents in not recommending their names is unjustified. However, from a perusal of the aforesaid judgment, it is crystal clear that the Hon'ble Supreme Court has held that no straight jacket formula can be laid down to allocate the marks for interview, where selection is to be made by written test as well as by the interview. It was held that awarding higher percentage of marks to those who got lower marks in written test in comparison to some who got higher marks in written examination, an adverse inference can be drawn. However, in the present case, there are not such facts as emerging from the pleadings, except the fact that the Selection Committee has not recommended any person for the posts to which the petitioners had applied.

18. Learned counsel for the petitioners has further contended that since the Selection Committee has not

2026:HHC:13597

acted fairly, a direction deserves to be given to respondent No.2-Corporation to offer them the appointment. As already discussed above, the power of judicial review of this Court is very limited and since in the present case, the petitioners have not impleaded any of the members of the Selection Committee by name, the allegations of malafide or bias cannot be entertained and thus, this Court is of the considered view that the respondent No.2-Corporation has not committed any illegality inasmuch as there is no arbitrary action on its part, which requires interference by this Court.

19. Consequently, I do not find any merit in the present writ petition and the same is accordingly dismissed. However, there is no orders as to cost. Pending application(s), if any, also stand disposed of.

27th April, 2026 **(Jiya Lal Bhardwaj)**
(Anurag) **Judge**