IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWPOA No.5665 of 2019
Decided on: 28th October, 2026

Bhaskar Sehgal and another ...Petitioners

versus

State of H.P. and others ...Respondents

Coram

Hon'ble Mr.Justice Jiya Lal Bhardwaj, Judge.

Whether approved for reporting?[1] Yes.

For the petitioners:	**Mr. Adarsh K. Vashista and Mr. Shivom Vashista, Advocates.**
For the respondents:	**Mr. Amandeep Sharma, Additional Advocate General with Mr. Hemant Kumar Verma, Deputy Advocate General for respondent No.1-State.** **Mr. Vikrant Thakur, Senior Advocate with Mr. Shubham Singh Guleria, Advocate for respondent No.2.** **Mr. Surinder Saklani, Advocate for respondents No.5, 8, 9 & 19.** **Mr. Aakash Thakur, Advocate for respondents No.10 and 14.** **Respondents No.3, 4, 6, 7, 11 to 13, 16 to 18, 15 to 27 *ex-parte*.**

Jiya Lal Bhardwaj, Judge(Oral)

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

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

"i) *That the impugned interview process conducted by the Respondents to the posts of Assistant Engineer (Class-I, Gazetted) on contract basis may kindly be quashed and set aside being contrary to law laid down by the Hon'ble Apex Court. The Respondents may kindly be directed to re-conduct the interview process for the post of Assistant Engineer, (Class-I, gazetted) on contract basis and the Respondent No.2 may further be directed to consider the candidature of the applicants in the selection process to be re-conducted by the Respondents in accordance with law laid down by the Hon'ble Apex Court, in the interest of justice."*

2. Shorn of unnecessary details, the key facts of the case are that the petitioners, who were eligible to hold the post of Assistant Engineer (Civil) had applied in pursuance of Advertisement dated 22.07.2014 issued by respondent No.2-Himachal Pradesh Public Service Commission (in short 'Commission') before the cut-off date prescribed for the post.

3. The petitioners were issued call letters for appearing in the screening test and they appeared in the screening test and were declared eligible for appearing in the viva-voce test/interview to be conducted by the Commission. Thereafter, the petitioners appeared in the viva-voce test/interview conducted by the Commission on 28/29.07.2015. However, when the result was declared by the

Commission, their names did not find mention in the recommendations made by it.

4. The petitioners after declaration of the result sought information under the Right to Information Act, 2005 (in short 'RTI Act') with respect to the break-up, if any, of the 100 marks fixed for the interview/viva-voce. As per the information supplied by the Commission, vide letter dated 19.02.2015 (Annexure A-7), it was stated that there was no break-up of 100 marks fixed for the interview. However, the marks are awarded in consultation by the Interview Board, keeping in view the performance of the candidate. On receipt of the information under the RTI Act, the petitioners have approached this Court by way of the present petition.

5. The precise grievance raised by the petitioners in the writ petition and what has been highlighted by the learned counsel representing the petitioners is that the selection process adopted by the Commission is in complete derogation to the principles of service jurisprudence and in clear violation of the law laid down by the Hon'ble Supreme Court in ***The Director General, Indian Council for Agricultural Research and others*** *vs.* ***D. Sundara Raju***, (2011) 6 SCC 605. It has been averred that making selection solely on fixing the interview as the criteria for selection for the post of Assistant Engineer (Civil), Class-I (Gazetted), without prescribing

any break-up of marks fixed, is *prima facie* arbitrary, unreasonable and highly illegal. It has further been argued that the selection on the basis of the viva-voce test/interview with allocation of as high as 100% of the total marks meant for selection for viva-voce test/interview is beyond reasonable proportions and the same leaves scope and possibility of serious errors crept into the selection process and renders the selection of the candidates arbitrary. Therefore, it has been prayed that the interview process conducted by the Commission to the post of Assistant Engineer (Civil) may be quashed and set aside being contrary to the law laid down by the Hon'ble Supreme Court and further the Commission be directed to re-conduct the interview process again and consider the candidatures of the petitioners for selection.

6. Respondent No.1-State filed reply to the petition and in preliminary submissions averred that the original application filed by the petitioners is not maintainable, since no injustice or illegality has been committed by respondent No.1. The entire selection process has been conducted by the Commission. It has further been averred that the requisition was sent to the Commission on 06.05.2014 to fill up 20 posts and on 06.08.2014 to fill up 8 posts of Assistant Engineer (Civil) on contract basis. The Commission recommended the names of 25 candidates, vide letter dated 06.08.2015.

Respondent No.1 is only an appointing authority. Since the issue in controversy i.e. fixing the interview as sole criteria pertains to the selection/recommendations of successful candidate(s) by the recruiting agency i.e. the Commission, no illegality has been committed by respondent No.1.

7. Respondent No.2 filed separate reply and averred in preliminary submissions that the petitioners are estopped from challenging the selection process after having appeared and failed in the interview. The selection of candidates was made on the basis of their performance in the viva-voce test/interview, which was of maximum 100 marks without any break-up of the marks. The interview was conducted after short-listing the candidates by a screening test and marks secured by the candidates in the screening test are not counted for the final merit list. The purpose and principles of holding screening test and viva-voce test have been discussed by this Court in CWP No. 1301 of 2009, titled, ***Ashu Jethi (Phull) and another*** *vs.* ***State of Himachal Pradesh and others***, decided on 07.01.2010. Once the petitioners did not challenge the Advertisement, the Recruitment and Promotion Rules for selection to the post of Assistant Engineer (Civil) as well as the Rules of Business of the Commission, which are available on the website of the Commission and provide for holding an interview of

100 marks after the screening test, the petition is not maintainable. It has further been averred that in response to the Advertisement, 2655 applications were received by the Commission, out of which, 506 applications were rejected for want of requisite fee and 2149 candidates were admitted provisionally. Since the number of candidates was fairly large in proportion to the number of vacancies, a screening test was held to shortlist the number of candidates for interview on 15.03.2015. The screening test was held in consonance with the provisions contained in Chapter (C) (iii) of the Rules of Business of the Commission. In this screening test, only 1224 candidates appeared out of the total 2149 provisionally admitted candidates. On scrutiny, the candidature of 170 candidates was rejected for want of essential qualifications and 1054 candidates were finally admitted provisionally. Against these 1054 provisionally admitted candidates, 109 candidates including the petitioners were declared qualified in the screening test and were further directed to appear before the Interview Board. The interview of those candidates, who qualified in the screening test was conducted with effect from 27.07.2015 to 01.08.2015 and 25 successful candidates in all were recommended to respondent No.1 for appointment to the post of Assistant Engineer (Civil). The petitioners, being lower in merit, were not selected and thus the petition filed by them is not

tenable and is liable to be dismissed with costs. On merits, the same and similar submissions have been made and prayed for dismissal of the petition.

8. The private respondents also filed their separate replies and averred that the petition is misconceived and is liable to be dismissed. The petitioners once having participated in the entire selection process including the screening test and thereafter the viva-voce test/interview cannot challenge the same selection process after having failed to secure selection. The petitioners had full knowledge of the procedure being followed by the Commission and without raising any objection thereto, voluntarily participated in the selection process. Further, the petitioners have not challenged the Advertisement No.3/2014 dated 22.07.2014 and subsequent addendum dated 24.08.2014, pursuant to which, the selection process was undertaken. Further, the petitioners have also not challenged the Recruitment and Promotion Rules applicable to the post of Assistant Engineer (Civil) nor the relevant Rules of Business of the Himachal Pradesh Public Service Commission, under which, the interview was prescribed to be of 100 marks. The selection process was conducted in accordance with the applicable Rules and procedure prescribed by the recruiting authority. The private respondents had no role whatsoever in framing the recruitment

criteria conducting the screening test, interviews or preparing the merit list. They had merely participated in the selection process as candidates and were selected on the basis of their performance before the Interview Board in accordance with the prescribed procedure. There are no allegations of fraud, malpractice, favoritism, manipulation or any other irregularity having been made against any of the answering respondents. The petitioners have failed to disclose any individual illegality attributable to the answering respondents, which would justify cancellation of their selection or appointment. The selection has been conducted by an independent recruiting authority after receipt of the requisition from the State Government. Further, the judgments, which have been relied upon by the petitioners are not applicable to the facts and circumstances of the case and as such prayed for dismissal of the writ petition.

9. I have heard the learned counsel for the parties and also perused the record carefully.

10. Learned counsel for the petitioners has vehemently argued that the selection could not have been made solely on the basis of the marks obtained in the interview. Before adverting to the submissions made by learned counsel representing the petitioners, it would be relevant to quote the relevant procedure as mentioned in the Advertisement No.3/2014 dated 22.07.2014, whereby the online

recruitment applications were invited from the desirous and eligible candidates for recruitment to the post of Assistant Engineer (Civil). The relevant criteria as mentioned in the Advertisement is reproduced hereunder.

SCREEENING TEST/EXAMINATION/VIVA-VOCE TEST:--

"(i) In cases where the number of eligible candidates for recruitment to the post(s) advertised by the Commission is inordinately large, the Commission may limit/shortlist the number of eligible candidates to be called for interviews by subjecting them to a screening test (objective-type / descriptive) of two hours duration. Final selection of a candidate will be made solely on the basis of his/her performance in the viva-voce test/ interview, which will be of maximum 100 marks. The minimum pass marks in interview are 45 for the candidates of general category and 35 marks for the candidates of reserved categories.

(ii) Where selection is to be made on the basis of performance of the candidates having qualified the screening test, before the interview board, a candidate scoring more marks in the interview shall be placed above the candidates scoring lesser marks in the interview. If the candidates will score equal marks in an interview, then a candidate securing more marks in the screening test will be placed above the candidate securing lesser marks in the screening test. In case the marks of screening test are equal then the candidate who is senior in age will be placed above the candidate junior in age. Where selection is to be made purely on the basis of performance of the candidates before the interview board, a candidate scoring more marks in the interview shall be placed above the candidates scoring lesser marks in the interview. If the candidates will score

equal marks in an interview, then a candidate who is senior in age will be placed above the candidate junior in age."

11. A perusal of the criteria stipulated in the Advertisement clearly mentions that in case where the number of eligible candidates for recruitment to the post advertised by the Commission is inordinately large, the Commission may limit/shortlist the number of eligible candidates to be called for interviews by subjecting them to a screening test (objective type/descriptive) of two hours duration. The final selection of a candidate will be made solely on the basis of his/her performance in viva-voce test/interview which will be of maximum 100 marks. The minimum pass marks in the interview are 45 for the candidates of General category and 35 marks for the candidates of reserved category. Once the said condition was stipulated in the Advertisement and the petitioners had applied knowing fully well about the said condition that the final selection of a candidate will be made solely on the basis of their performance in the viva-voce test/interview, which will be of maximum 100 marks, the petitioners at this stage, cannot rake up the issue that the criteria so stipulated in the Advertisement is dehors the judgments passed by the Hon'ble Supreme Court.

12. Learned counsel for the petitioners has placed reliance upon the judgments of the Hon'ble Supreme Court in **Ashok Kumar**

Yadav and others vs. **State of Haryana and others**, (1985) 4 SCC 417, **Mohinder Sain Garg** vs. **State of Punjab and others**, (1991) 1 SCC 662 and **The Director General, Indian Council for Agriculture Research and others** vs. **D. Sundara Raju,** (2011) 6 SCC 605 and contended that the condition of 100% marks for viva-voce test in selection is arbitrary and excessive. Learned counsel has further invited the attention of this Court to the judgment passed by the Hon'ble Supreme Court in **Dr. (Major) Meeta Sahai** vs. **State of Bihar and others,** (2019) 20 SCC 17 and contended that even if the petitioners have participated in the selection process, they have only accepted the prescribed procedure and not the illegality in it.

13. On the other hand, the learned counsel representing the respondents have placed reliance upon the judgments of the Hon'ble Supreme Court in ***Om Prakash Shukla*** vs. ***Akhilesh Kumar Shukla and others*** AIR 1986 SC 1043, ***Madan Lal and others*** vs. ***State of J&K and others*** (1995) 3 SCC 486, ***Union of India and another*** vs. ***N. Chandra Sekharan and others*** (1998) 3 SCC 694, ***Vijay Syal and another*** vs. ***State of Punjab and others*** (2003) 9 SCC 401, ***Dhanajay Malik and others*** vs. ***State of Uttaranchal and others*** (2008) 4 SCC 171, ***Anupal Singh and others*** vs. ***State of Uttar Pradesh through***

Principal Secretary, Personnel Department and others, (2020) 2 SCC 173 and ***Tajvir Singh Sodhi and others*** vs. ***State of Jammu and Kashmir and others*** (2023) 17 SCC 147 and contended that once the petitioners had taken a calculative chance and appeared in the interview and when the result of the interview was not favourable to them, they cannot turn around and challenge the recruitment process subsequently to contend that the process of interview was unfair or Selection Committee was not properly constituted or the criteria laid down is not justifiable.

14. Learned counsel representing the respondents have also placed reliance upon the judgment passed by the Division Bench of this Court in CWP No.1301 of 2009, titled, **Ashu Jethi, (Phull) and another** vs. **State of Himachal Pradesh and others** and connected petitions, 2010 SCC Online HP 88.

15. I have given my thoughtful consideration to the judgments cited at the Bar and of the considered view that the petitioners once having participated in the process cannot turn around and challenge the criteria stipulated in the Advertisement. The petitioners had applied for the post of Assistant Engineer (Civil), which is a Class-I post, and they were aware about the criteria stipulated in the Advertisement, as quoted above. Once it was made clear in the Advertisement that the final selection of a candidate will

be made solely on the basis of his/her performance in the viva-voce test/interview, if he/she has been found unsuccessful, he/she cannot turn around and lay challenge to the said criteria. Had the Commission not mentioned the said criteria in the Advertisement and the selection was made solely on the basis of the marks obtained by the candidates in the viva-voce test/interview, the petitioners could have raised a plea that the criteria, so fixed to make selection only on the basis of the marks awarded in the interview is bad. Once the petitioners have participated in the selection process and not declared successful since they did not find their place in the merit list drawn by the Commission after appearing in viva-voce test/interview, they cannot lay challenge to the procedure and the criteria laid down in the Advertisement.

16. Learned counsel for the petitioners has relied upon the judgments passed in ***Ashok Kumar Yadav*** and ***Mohinder Sain Garg's*** cases (supra) to contend that the selection cannot be made on the basis of the 100% marks in the interview. However, the said contention cannot be accepted once the petitioners had participated in the selection process conducted by the Commission, without any demur or protest. The petitioners had appeared in the screening test and after having qualified the same were called for the viva-voce test/interview and once they have remained unsuccessful in

the interview, they cannot lay challenge to the criteria laid down in the Advertisement.

17. Learned counsel for the petitioners has further relied upon the judgment in ***Meeta Sahai's*** case (supra) to contend that even if the candidate by agreeing to participate in the selection process accepts only the prescribed procedure, not the illegality in it. In the present case, the Commission has not committed any illegality while making the selection and it has only adhered to the procedure prescribed in the Business Rules and further the conditions stipulated in the Advertisement, which were well known to the petitioners before applying to the post of Assistant Engineer (Civil) which is a Class-I post. The judgment of the Hon'ble Supreme Court in ***Meeta Sahai's*** case is attracted only if the recruiting agency commits some illegality during the process of making selection and not on the basis of the criteria which was prescribed and followed. The criteria was already prescribed in the Advertisement and it was made clear to the persons who had applied pursuant to the Advertisement issued for appointment to the post of Assistant Engineer (Civil) that the final selection will be made solely on the basis of his/her performance in the viva-voce test/interview, which will be of maximum 100 marks. Therefore, the aforesaid judgment is not attracted to the facts of the present case.

18. The Hon'ble Supreme Court in ***Tajvir Singh Sodhi's*** case (supra) has succinctly dealt with the issue and held that once the candidate has taken part in the selection process without any demur or protest, he cannot challenge the same after having been declared unsuccessful. The candidate cannot approbate and reprobate at the same time. The relevant para of the judgment reads as under:-

> *"39. It is therefore trite that candidates, having taken part in the selection process without any demur or protest, cannot challenge the same after having been declared unsuccessful. The candidates cannot approbate and reprobate at the same time. In other words, simply because the result of the selection process is not palatable to a candidate, he cannot allege that the process of interview was unfair or that there was some lacuna in the process. Therefore, we find that the writ petitioners in these cases, could not have questioned before a Court of law, the rationale behind recasting the selection criteria, as they willingly took part in the selection process even after the criteria had been so recast. Their candidature was not withdrawn in light of the amended criteria. A challenge was thrown against the same only after they had been declared unsuccessful in the selection process, at which stage, the challenge ought not to have been entertained in light of the principle of waiver and acquiescence."*

19. Similarly a Division Bench of this Court has also succinctly dealt with the issue after considering the various

judgments of the Hon'ble Supreme Court, some of which have been referred above, and has taken the same view that once the candidate has participated in the process, he cannot turn around and lay challenge to the criteria of selection process.

20. In the present case, the petitioners once having participated in the selection process after knowing fully well that the final selection was to be made on the basis of the marks obtained in the interview only and the screening test was only to short-list the number of eligible candidates to be called for viva-voce test/interview, no illegality has been committed by the Commission while making selection and thereafter recommending the eligible persons for appointment to the post of Assistant Engineer (Civil).

21. Resultantly, in view of the aforementioned observations, I do not find any merit in the present petition and the same is accordingly dismissed. However, there shall be no order as to costs. Pending applications, if any, also stand disposed of.

(**Jiya Lal Bhardwaj**)
Judge

28th October, 2026
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