

HIGH COURT OF JAMMU AND KASHMIR AT JAMMU.

Date of decision: 12.2.2008

SWP No. 1506/2007 Dr. Navkiran Kapoor V. State of J&K & Ors.
SWP No. 1633/2007 Dr. Shanu Koul v State of J&K & Ors.
SWP No. 1756/2007 Dr. Vikas Bachloo v. State of J&K & Ors.

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Hon'ble Mr. Justice Mansoor Ahmad Mir, Judge

Appearing Counsel:

For the petitioner(s) : Mrs. Surinder Kour, Advocate.

For the respondent(s): Mrs. Shaista Hakim, Dy. AG for Res. 1 to 3.

Mr. DC Raina Sr. Adv with Mr.FA Natnoo
Adv for Res. 4 to 7.

M/s LK Sharma, MK Bhardwaj, Sachin
Sharma, Ms Puneeta Sehgal, K.L. Pandita and
K.M. Bhatti Advocates.

JUDGEMENT

I deem it proper to decide all the writ petitions in hand titled (supra) by this judgment because common questions are involved in these petitions.

It is necessary to notice the brief facts of the case which have given birth to this lis.

Notification No. 4-PSC of 2006 dated 26.5.2006-Annexure-D came to be issued by the Public Service Commission Respondents No. 4 to 7 for selection of the posts of Medical Officers (Homoeopathy).

It is profitable to reproduce the relevant portion of the notification here as under:-

“1. Applications on prescribed forms are invited (from permanent residents of J&K State only). For the following posts, pay scale, educational qualification and age limit immediately follow the name of the post.

2. Last date for receipt of application forms by hand or by post is 10.07.2007. The date for determining

the eligibility of all candidates in every respect shall be the normal closing date prescribed for receipt of applications viz. 10.07.2006. In case the last date is declared a public holiday then the last date for receipt of application shall be the next working day.

Health and Medical Education Department.

2	Medical Officer (Homeopathy)	17	06	03	03	01	-	-	30
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Essential qualification (EQ) for item No. 3.

Bachelor degree in Homeopathy recognized by CC(H).....”

In terms of the notification the qualification required was Bachelor Degree in Homoeopathy recognized by CC (H). No other condition, so far, it relates to qualification was prescribed. The petitioners, private respondents and other candidates applied, participated in the selection process and selection came to be made-Annexure-G. The grievance projected by the writ petitioners is as under:-

- (i) That respondent No. 23 Showkat Ahmad Lone was not eligible for the reasons that he was not having registration in terms of Jammu and Kashmir Homeopathic Practitioners Act, 2003. (for short the Act).
- (ii) That the petitioners are meritorious as compared to private respondents, but less marks have been awarded to the petitioners in order to deprive them from the selection/appointment.

Respondents have resisted the writ petitions on the following grounds-

- i) that the petitioners have participated in the selection process and cannot challenge the same after failing to make a grade.
- ii) That the only qualification prescribed in terms of Advertisement Notice was that the candidates must possess Degree of Bachelor in Homoeopathy recognized by CCH and no other condition was prescribed. All the selected candidates including respondent No. 23 Showkat Ahmad Lone are armed with the said degree. The candidates were not required to have registration in terms of the Act.
- iii) The petitioners have not challenged the advertisement notification-Annexure-D but accepted it and participated in selection process.

Heard. Perused.

The relevant clause of notification is reproduced hereinabove, which clearly indicates that who was competent to participate in the selection process. The qualification which was required was Bachelor Degree of Homoeopathy CC(H) not the registration in terms of the Act. Thus this argument of the petitioners fails.

That all the three writ petitions revolve around Showkat Ahmad Lone on the ground that he was not holding registration. The Commission/respondents No. 4 to 7 and respondent No. 23 i.e. Showkat Ahmad Lone have categorically stated that he is armed with the required degree and have also placed photostat copy of the certificate with the reply and the Commission has also submitted

Photostat copy of certificate with the selection record. Thus this ground fails.

The petitioners cannot make a U-ground after taking part in selection process and cannot take a stand that the selection process is bad in law. This court in case titled as Unemployed Union of Kalakote vs. State of J&K, 1998 KLJ page 336 held that when a candidate participates in the selection process he cannot challenge the same. It is profitable to reproduce para-20 of the said judgment here as under:

“20. All the petitioners took part in the selection process. They competed alongwith others. They were not high up in the merit list. If this be the position then they cannot turn around and contend that the process of selection is bad. Where a candidate takes part in the process of selection i.e. takes a chance of favourable decision in his favour, he cannot turn around and challenge the process of selection. See G. Sarana versus Lucknow University AIR 1976 SC 2428, Justice M.M. Punchi (Now chief Justice of Supreme Court of India) in Balbir Singh vs. State of Punjab, 1983 (1) SLR 109 observed that competing candidates who remain unsuccessful are estopped from challenging the process of selection. Another Division Bench of the Punjab & Haryana High Court in Rajeshwar Singh vs. State 1991 (1) SLR 680 reached the same conclusion. For this reason also the petition as must fail.”

The petitioners have also assailed the selection on the ground that excessive marks had been allocated to the selected candidates-private respondents. Keeping in view the fact that the petitioners have participated in the selection process, they cannot assail selection on the said ground. The Apex Court has taken the same view in a case titled as Siya Ram vs. Union of India & Ors. (AIR 1998 SC 1470.)

The Apex Court also in case titled as K.H. Siraj vs. High Court of Kerala & Ors. (AIR 2006 SCW 3136) held that it is not open to the appellants/petitioners to turn round thereafter when they failed at the

interview. It is profitable to reproduce paras 54 and 75 of the said judgment here as under:-

“54. In our opinion, the interview is the best mode of assessing the suitability of a candidate for a particular position. While the written examination will testify the candidates’ academic knowledge, the oral test alone can bring out or disclose his overall intellectual and personal qualities like alertness, resourcefulness, dependability, capacity for discussion, ability to take decisions, qualities of leadership etc. which are also essential for a judicial officer.

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75. The appellants/petitioners having participated in the interview in this background, it is not open to the appellants/petitioners to turn round thereafter when they failed at the interview and contend that the provision of a minimum mark for the interview was not proper. It was so held by this Court in paragraph 9 of *Madan Lal & Ors. V. State of J&K & Ors.*, (1995) 3 SCC 486 as under:

“Before dealing with this contention, we must keep in view the salient fact that the petitioners as well as the contesting successful candidates being respondents concerned herein, were all found eligible in the light of marks obtained in the written test, to be eligible to be called for oral interview. Up to this stage there is no dispute between the parties. The Petitioners also appeared at the oral interview conducted by the Members concerned of the Commission who interviewed the petitioners as well as the contesting respondents concerned. 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 the Selection Committee was not properly constituted. In the case of *Om Prakash Shukla v. Akhilesh Kumar Shukla*, 1986 Suppl SCC 283, 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.”

The Apex Court in a case titled as Dalpat Abasaheb Solunke vs. Dr. B.S. Mahajan AIR 1990 SC 434 held that the court cannot sit as a court of appeal over the assessment made by the Selection Committee. Same view was taken by Division Bench of this court in case titled as Taskeena Fazil University of Kashmir & Ors reported in 1998 SLJ page 1. It is profitable to reproduce paras 18 and 22 of the said judgment here as under:-

“18. We are not impressed by the submission advanced before us by learned counsel for Appellant. It may be true that in an appropriate case, reasonable inference of mala-fides from the pleadings and antecedent facts and circumstances may reasonably be drawn. But for such inference, there must be firm foundation of facts pleaded and established. Such inference cannot be drawn on the basis of insinuation and vague suggestions as said by the Apex Court in Rajendra Roy’s case (supra). In Madan Lal’s case, Apex Court rejected the challenge as to assessment of merit holding that it is a matter which falls within the exclusive purview of Expert Committee and court does not sit as a court of Appeal over the assessment made by the committee of candidates interviewed by it. This decision is of no help to the Appellant (see also AIR 1990 SC 44; Dalpat Abasaheb Solunke etc. etc. vs. Dr. B.S. Mahajan etc. etc.)

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 22. Then it was contended that respondent-6 was not eligible, however, he was called for interview. Frankly speaking, his contention has no force. Shri R. Babaz submitted that the petitioner was found eligible during the process of scrutiny of his case by the University. Perusal of his Bio-Data would demonstrate in unmistakable terms that he has brilliant academic record and experience in research and “Iqbaliat” we took serious pains for examining this allegation. Examining the qualifications in the context of eligibility criteria prescribed for this post, we do not notice that respondent-6 is not qualified to be considered for the post of Reader in Iqbal Institute of Kashmir University. He has rightly been found eligible by the University and Selection Committee has not committed any illegality in calling him for interview. Ultimately, it is for the Selection Committee to pick up the best out of the available candidates and the court should not interfere in the academic field of the University unless the action is without jurisdiction or suffers from mala-fides. (See AIR 1990 Supreme Court 434; Dalpat Abasaheb Solunke etc. etc. vs. Dr. B.S. Mahajan etc. etc.)”

The argument of the petitioners is that the criteria adopted by the selection committee is bad. It is for the concerned authority to determine and to fix criteria not for the court. Division Bench of this court in case titled as Hardesh Kumar vs. State of J&K & Ors. 1999 S.L.J 149 laid down the same law. It is profitable to reproduce para-2 of the judgment here as under:-

“2. There can be no dispute with the proposition that it is for the concerned authority to determine as to what criteria it has to adopt in the matter of making the selection. As such, with regard to the argument other than the creation of education zones nothing can be said in favour of the appellants.”

While going through the writ petitions one comes to the inescapable conclusion that the writ petitioners have not alleged mala-fides or the selection is outcome of extraneous considerations. It is also worthwhile to mention here that neither mala-fides are alleged nor the members of the Selection Committee are arrayed as parties. Viewed, thus, the petitions are not maintainable.

Keeping in view the above said facts, all these writ petitions merit to be dismissed. Accordingly, these are dismissed alongwith all CMPs. Interim directions shall stand vacated.