

## HIGH COURT OF JAMMU AND KASHMIR AT JAMMU

**SWP No.3444/2014**

**CMA No.4664/2014**

Date of Decision: 28.04.2015

---

Shivally Sharma & ors. **Vs.** State of J&K & ors.

---

**Coram:**

*Hon'ble Mr. Justice Mohammad Yaqoob Mir*

---

**Appearing counsel:**

For the Petitioner(s) : Mr. B. R. Manhas

For the Respondent(s): Mr. R. A. Jan, AG with Mr. K. M. Bhatti,  
Ravinder Sharma, F. S. Butt & Irfan Khan.

---

i) Whether approved for reporting  
in Journal/Digest: **YES/NO**

ii) Whether approved for reporting  
in Media/Press: **YES/NO/OPTIONAL**

---

1. Petitioners and respondents No.8 to 288, amongst other candidates, have competed for the posts of Teachers District Cadre Ramban as were advertised vide advertisement notice Nos.03 of 2012 dated 28.12.2012, 05 of 2013 dated 02.03.2013 and 06 of 2013 dated 10.05.2013. When final selection list was made public, petitioners finding themselves excluded have filed the instant petition praying for setting aside the whole selection process and to command the respondents to initiate rational and justified process of selection based on reasonable, logical and realistic criteria giving proper weightage and preference to the higher qualification, further to command the respondents to apply same criteria for selection of teachers as was in vogue on the dates the vacancies had occurred. The selection list of General

Line Teachers being illegal and in violation of statutory rules of J&K Civil Services (Decentralization and Recruitment) Rules, 2010, therefore, the respondents No.6 and 7 shall be restrained from issuing any formal appointment order in favour of selected candidates of District Ramban.

**2.** In terms of advertisement notice Nos.03 of 2012, 05 of 2013 and 06 of 2013, applications had been invited from the eligible candidates as against various posts which include District Cadre posts of Teachers as per District-wise details notified in the advertisement notices. Batch of petitions have been filed, arguments were heard in all the petitions together. In certain petitions additional grounds have been taken, therefore, all the petitions are taken up for disposal one by one.

**3.** Before coming to the arguments as advanced by Mr. Manhas, learned counsel for the petitioners, it shall be quite advantageous to give brief flashback of the facts and circumstances of the case:

In terms of Advertisement Notice No.03 of 2012, 5 posts of teachers were advertised, pursuant to Advertisement Notice No.05 of 2013, 118 posts and pursuant to Advertisement Notice No.06 of 2013, 169 posts of Teachers for District

Ramban were advertised. A common written test of the candidates was conducted. Petitioners had passed the written test so were called for viva voce along with other qualified candidates. In the final selection, they could not be included in view of their merit position.

4. The petitioners cannot challenge the selection process after they have consciously, with all calculations participated in the process i.e. they have taken the written examination, then they have participated in the viva, now to turn around to say that the process is bad is not permissible. In support of this view, I am fortified by the judgment rendered by the Hon'ble Apex Court captioned **Madan Lal & ors v. The State of Jammu and Kashmir & ors.** reported in **1995 SCC (3) 486**. Para 9 of the judgment is relevant to be quoted:

"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 marks obtained in the written test, to be eligible to be called for oral interview. Upto this stage 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 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. In the case of [Om Prakash Shukla v. Akhilesh Kumar Shukla and Ors.](#), (AIR 1986 SC 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.”

5. From the judgment rendered by the Hon’ble Apex Court in the case captioned **Vijendra Kumar Verma Vs. Public Service Commission Uttarakhand & ors**, reported in **(2011) 1 SCC 150**, paras 25, 27 and 28 are relevant to be quoted:

“25.In this connection, we may refer to the decision of the Supreme Court in *G. Sarana (Dr.) v. University of Lucknow* wherein also a similar stand was taken by a candidate and in that context the Supreme Court had declared that the candidate who participated in the selection process cannot challenge the validity of the said selection process after appearing in the said selection process and taking opportunity of being selected. Para 15 inter alia reads thus:-

“15.... 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.”

“27.In *Union of India v S. Vinodh Kumar* (2007) 8 SCC 100 at paragraph 18 it was held that:

“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.”

“28.Besides, in *K.H. Siraj vs. High Court of Kerala* reported in (2006) 6 SCC 395 in paragraph 72 and 74 it was held that candidates who participated in the interview with knowledge that for selection they had to secure prescribed minimum marks on being unsuccessful in interview could not turn around and challenge that the said provision of minimum marks was improper, said challenge is liable to be dismissed on the ground of estoppels”.

6. From the judgment rendered by the Hon’ble Apex Court

in the case of **Ramesh Chandra Shah and others v. Anil Joshi and others** reported in **(2013) 11 SCC 309**, paras 23 and 24 are relevant to be quoted:

“23. The doctrine of waiver was also invoked in *Vijendra Kumar Verma v. Public Service Commission*, and it was held(SCC p.156, para 24):

“24. When the list of successful candidates in the written examination was published in such notification itself, it was also made clear that the knowledge of the candidates with regard to basic knowledge of computer operation would be tested at the time of interview for which knowledge of Microsoft Operating System and Microsoft Office operation would be essential. In the call letter also which was sent to the appellant at the time of calling him for interview, the aforesaid criteria was reiterated and spelt out. Therefore, no minimum benchmark or a new procedure was ever introduced during the midstream of the selection process. All the candidates knew the requirements of the selection process and were also fully aware that they must possess the basic knowledge of computer operation meaning thereby Microsoft Operating System and Microsoft Office operation. Knowing the said criteria, the appellant also appeared in the interview, faced the questions from the expert of computer application and has taken a chance and opportunity therein without any protest at any stage and now cannot turn back to state that the aforesaid procedure adopted was wrong and without jurisdiction.”

“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 the 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.”

**7.** For the afore-stated reasons and the law laid down by the Hon’ble Apex Court, the writ petition is without merit.

**8.** The contentions otherwise raised by Mr. Manhas,

learned counsel for the petitioners, also merits rejection. According to him, the procedure as prescribed under Rule 14(1) of the J&K Civil Services Decentralization and Recruitment Rules, 2010, notified vide SRO 375 dated 21-10-2010, was to be observed for calling the candidates for interview, however, the Selection Committee, for reasons to be recorded in writing, can conduct a written test for short listing the candidates for admission to the oral test for purposes of selection of candidates.

**9.** Rule 14 has been re-casted vide amendment as notified vide SRO 342 of 2013 dated 22.07.2013 which mandates that the Board to hold the written test for all eligible candidates, the viva voce of the eligible candidates shall be conducted by the Select Committee, the number of candidates to be called for viva voce shall not be less than three times and more than five times the number of vacancies to be filled up.

**10.** Learned counsel for the petitioners would submit that the position as existed at the time of advertisement should prevail i.e. Selection Committee should have adhered to earlier Rule 14(1) which provided for restricting the number of applicants for oral and/or written test, as the case may be, to at least five times the number of vacancies on the basis of

academic merit in the qualifying examination converted into points on pro rata basis out of the total points allocated for the basic eligibility/qualification and grant of weightage for the higher qualification in the discipline concerned.

**11.** The argument of learned counsel for the petitioners pales into insignificance on the count that the Proviso to earlier Rule 14(1) would also provide for conduct of written test for short listing the candidates to oral test in the ratio of 1:5. The recasted Rule 14 mandates conduct of written test and further provides that the number of candidates to be called for interview can be restricted to three times or five times the number of vacancies. Written test in both the cases is permissible and by conducting written test no prejudice is caused to the petitioners. That apart, the petitioners with all calculations, without any demur have participated in the written test and have qualified the same, thereafter have participated in the viva and on failing to make the grade for selection have started to find fault with the selection, which is not permissible. In addition thereto, the candidates have been called for viva in the ratio of 1:5 which was also permissible under earlier Rule 14 as well as recasted Rule 14, therefore, contention raised is without any merit.

**12.** Next contention of the learned counsel is that the Regulations have been framed in the year 2013 and notified on 15.10.2013 whereas written test was conducted on 17.09.2013.

**13.** The said Regulations supplement the mode and method for selection process. Whether Regulations have been notified earlier or later in point of time, the litmus test is as to whether those Regulations have caused any prejudice to the petitioner. Answer has to be "no". Though in the Regulation No.17 it has been provided that the marks/points allotted to the written test and the viva will be determined by the Board, however, points allotted to the written test shall not be less than 60 points and more than 80 points and the points for viva shall not exceed 20 points whereas Regulation No.28 provides that the candidates securing minimum 40% and 35% marks in the written test in open and reserved categories respectively or the cut off merit in the ratio of not less than three times and more than five times the number of vacancies to be filled up, whichever is higher, shall be eligible to be called for viva voce.

**14.** The Regulations, in effect, provides for determining the criteria. Regulation 28 provides that in the written test candidate must secure 40% in Open Merit category and 35%



in the Reserved Category, in a way percentage has been slashed down but that, in any manner, has not affected the rights of the petitioners and even the petitioners have not been able to show that any candidate inferior in merit to them has been selected.

**15.** Lastly, learned counsel would submit that finally selection should have been made on the basis of preference, the petitioners having higher qualification were to be preferred as against others. The submission is without substance. In case petitioners would have failed in the written test, then how could they claim preference. General test has been conducted, viva has been held, they have been inferior in merit. It is now settled that the preference will operate where merit is equal not otherwise. Petitioners have even not been able to secure minimum 40% marks in the written test but despite that, under the orders of the Court, they have been admitted to interview but still failed to make the grade. The petitioners claim to be meritorious but that position is answered by their merit obtained in the written test having secured less than 40% marks, therefore, claiming preference by the petitioners is unwarranted.

**16.** While summing up, no case whatsoever is made out by

the petitioners which would warrant indulgence. The process of selection and the final selection is not open to be challenged by the petitioners except for *mala fides* which have not been pleaded nor alleged, therefore, petition is dismissed along with connected CMA.

*(Mohammad Yaqoob Mir)*  
*Judge*

Jammu  
.04.2015  
"Mohammad Altaf"