

**HIGH COURT OF JUDICATURE FOR RAJASTHAN  
BENCH AT JAIPUR**

S.B. Civil Writ Petition No. 9024/2022

Ankit Kumar S/o Shri Vijendra Singh, Aged About 26 Years, R/o Village Lumas, Tehsil Mandawa, District Jhunjhunu (Raj.)

----Petitioner

Versus

1. The Union Of India, Through Secretary, Ministry Of Home Affairs, Government Of India, New Delhi
2. Directorate General, Border Security Force (Personnel Directorate Recruitment Section), R.k. Puram, New Delhi-110066
3. Commandant (Recruitment), Border Security Force (Personnel Directorate Recruitment Section), R.k. Puram, New Delhi-110066

----Respondents

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For Petitioner(s) : Mr. Sandeep Garssa

For Respondent(s) :

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**HON'BLE MR. JUSTICE INDERJEET SINGH**

**Order**

**30/06/2022**

Instant writ petition has been filed by the petitioner with the following prayers:-

"It is, therefore, most humbly prayed that your Lordships may kindly be pleased to call for the entire record relating to the case, examine the same and accept and allow this writ petition, and (I) by issuance of an appropriate writ, order or direction the respondents be directed rectify the advertisement (Annexure-1) to the extent of reserving 03 seats out of total 15 seats of Constable (Kennelman) (Group-C Post) instead of (01) seat in OBC category, as given in the advertisement and be further pleased to amend the final

result dated 08.06.2022 (Annexure-5) by selecting 03 candidates on the post of Constable (Kennelman) against OBC category and in case the petitioner came in merit, he may be given appointment with all consequential benefits;

(ii) Any other appropriate writ, order or direction which is deemed just and proper by this Hon'ble Court may also be passed in favour of the petitioner.

(iii) Costs of the writ petitioner may also be awarded in favour of the petitioner.

Brief facts of the case are that in pursuance to the advertisement (Annexure-1) issued by the respondents, the petitioner applied for the post of Constable (Kennelman) (Group-C Post). After holding the examination, the result of the selected candidates was declared by the respondents on 08.06.2022.

Counsel for the petitioner submits that the petitioner cleared the written examination as well as the physical efficiency test, however, he has not been selected by the respondents as only one candidate against the OBC category was selected by the respondents. Counsel further submits that the respondents have violated the reservation policy and only one seat has been reserved for OBC category and three seats were reserved for ST category, whereas three seats ought to be reserved for OBC category. Counsel further submits that the respondents be directed to appoint the petitioner on the post in question.

Heard counsel for the petitioner and perused the record.

The Hon'ble Supreme Court in the matter of **Ashok Kumar & Anr. Vs. State of Bihar & Ors.** reported in **(2017) 4 Supreme Court Cases 357** where in paras No.13 to 18, it has been held as under:-

*“13. The law on the subject has been crystalized in several decisions of this Court.*

*In Chandra Prakash Tiwari v. Shakuntala Shukla (2002), 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 MANU/SC/7926/2007 : (2007) 3 SCC 100, this Court 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.(See Munindra Kumar v. Rajiv Govil (1991) and Rashmi Mishra v. M.P. Public Service Commission).*

*14. The same view was reiterated in Amlan Jyoti Borroah where it was held to be well settled that 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, the same principle was reiterated in the following observations:(SCCp.584, para 16)*

*"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, Marripati Nagaraja v. Government of Andhra*

*Pradesh, Dhananjay Malik and Ors. v. State of Uttarakhand, Amlan Jyoti Borooh v. State of Assam and K.A. Nagamani v. Indian Airlines.*

16. *In Vijendra Kumar Verma v. Public Service Commission, 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 the selection process as being without jurisdiction. This was held to be impermissible.*

17. *In Ramesh Chandra Shah v. Anil Joshi, candidates who were competing for the post of Physiotherapist in the State of Uttrakhand 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 (SCC P.318, para18)*

“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, 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, this Court held that:(SCC P. 500, para17)*

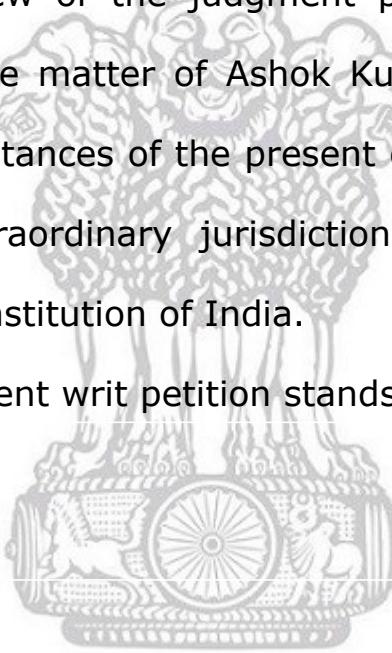
“17. Moreover, we would concur with the Division Bench on one more point that the Appellants had participated in the process of interview and not challenged it till the results were declared. There was a gap of almost four months between the interview and declaration of result. However, the Appellants 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. S.K. Shiva Subaramanyam."*

This writ petition filed by the petitioner deserves to be dismissed; for the reasons; firstly, the petitioner has participated in the selection process without raising any objection and he has filed the present writ petition after declaration of result, therefore, in my considered view, the petitioner is estopped to challenge the selection process after participating in the same without raising any objection, in view of the judgment passed by the Hon'ble Supreme Court in the matter of Ashok Kumar (supra), lastly, in the facts and circumstances of the present case, I am not inclined to exercise the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India.

Hence, the present writ petition stands dismissed.



(INDERJEET SINGH),J

Upendra Pratap Singh /99

सत्यमेव जयते