

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWPOA No. 5994 of 2019

Reserved on: November 10, 2020

Decided on: November 13, 2020

Mukesh Thakur and othersPetitioners

Versus

State of Himachal Pradesh and othersRespondents

Coram:

Hon'ble Mr. Justice Sandeep Sharma, Judge.

Whether approved for reporting? ¹yes.

For the Petitioners : Mr. Suneet Goel, Advocate.

For the Respondents : Mr. Sudhir Bhatnagar, Additional Advocate General with Mr. Kunal Thakur, Deputy Advocate General and Mr. Sunny Dhatwalia, Assistant Advocate General, for respondents Nos. 1 to 3.
Ms. Yogita Dutt Sharma, Advocate, for respondents Nos. 4 to 8.

Sandeep Sharma, Judge

Pursuant to notice published in the newspaper dated 18.10.2018 (Annexure A-2), petitioners alongwith other eligible candidates applied for the posts of Drivers in 4th Battalion Home Guards, Nahan. Petitioners being eligible candidates were called for recruitment process vide separate communications (Annexure A-3 and Annexure A-4), which was scheduled to be held with effect from. 15.10.2018 to 18.10.2018. Fitness test was conducted on 15.10.2018; driving test on 16.10.2018 and written test on 17.10.2018. Though

¹ Whether the reporters of the local papers may be allowed to see the judgment?

initially 500 candidates participated in the aforesaid selection process conducted by the respondents for 15 posts of Drivers, however, only 122 candidates including the petitioners appeared/qualified in the written examination. After conducting the driving test/written examination, respondents issued list of 15 selected candidates for post in question (Annexure A-1). Since the names of the petitioners did not appear in aforesaid selection list issued by respondents, and they were astonished to know that list contains names of certain persons (candidates at Sr. Nos.1,2, 4 8 and 11 /respondents Nos. 4 to 8 herein), who had either failed in the driving/fitness test or had not even participated in the selection process, petitioners namely Dimple Singh, Ashik Khan Mohammad and Mukesh Thakur lodged a written complaint to Hon'ble the Chief Minister, Himachal Pradesh and Inspector-General, Home Guards (Annexure A-5, A-6 and A-7), with regard to aforesaid illegalities and requested to take action in accordance with law. Though petitioner namely Mukesh Thakur applied for information regarding marks obtained by respondent No.5 Rahul Thakur in skill and written test alongwith copy of video-graphy made at the time of driving/skill test held on 15.10.2018 but such information is still awaited. Report with regard to alleged illegalities and irregularities committed in the aforesaid selection process also came to be published in certain newspapers as is evident from one newspaper report annexed as Annexure A-9. Since no action came to be taken on the complaints having been made by

the petitioners, they approached erstwhile Himachal Pradesh Administrative Tribunal by way of OA No. 698 of 2018, which on its transfer to this Court stands re-registered as CWPOA No. 5944 of 2019 praying therein for following main reliefs:

- “A. This Hon'ble Tribunal may very kindly be pleased to call for entire records pertaining to the case within the power and possession of the respondents;
- B. This Hon'ble Tribunal may very kindly be [pleased to quash the selection process for the post of driver in the 4th Battalion Home Guards, Nahan, particularly the selection list of candidates for the said pose (Annexure A-1);
- C. Direct the respondent authorities to carry out proper inquiry qua the into the illegalities in making selection of the candidates for the post in question.”

2. Respondents Nos. 1 to 3 while denying aforesaid allegations have claimed in their reply that the selection process under challenge, was conducted in a most fair and transparent manner. Respondents have claimed that the Enrolment Board constituted by Commandant General Home Guards and Civil Defense, Himachal Pradesh vide order dated 25.9.2018 conducted physical, driving and written tests with full transparency and impartiality. Respondents have submitted that since the entire process was conducted as per norms prescribed for selection process and in terms of Rules occupying the field, petition having been filed by the petitioners deserves dismissal being without any merit.

3. Respondents nos. 4 to 8 also filed a joint reply refuting therein the allegations of the petitioners. Aforesaid respondents have not only claimed that they participated in selection process alongwith the petitioners but have stated that they being more meritorious, have been rightly selected for the posts of Drivers.

4. Learned Tribunal below having taken note of the averments contained in the petition, vide order dated 6.12.2018, while granting time to the respondents, ordered that selection of respondents Nos. 4 to 8 as drivers on the establishment of 4th Battalion Nahan as per list of selected candidates, Annexure A-1, shall be subject to the final outcome of the petition.

5. I have heard the parties and gone through the record.

6. In nutshell, grievance of the petitioners as emerges from the pleadings adduced on record is that the respondents, while carrying out selection for the posts of drivers in 4th Battalion, Home Guards, have committed serious illegalities and irregularities and have appointed the persons (respondents Nos. 4 to 8) who had either failed in the diving/fitness test or had not at all appeared in the selection process.

7. Respondents Nos. 1 to 3 with a view to refute the aforesaid allegations of the petitioners and to justify the selection of respondents Nos. 4 to 8, have placed on record various documents alongwith their reply, perusal whereof clearly reveals that though intimation with regard to selection against 15 posts of drivers was given in newspaper, Annexure A-2, but in such news clipping, terms and conditions i.e.

eligibility, age criteria, physical standards and educational qualifications were clearly mentioned. Apart from this, terms and conditions stood clearly mentioned in the form of enrollment, which was required to be furnished at the time of selection and as such, there appears to be no force in the claim of the petitioners that they were not apprised with regard to terms and conditions and standards to be adopted by respondents during selection process. Similarly, careful perusal of Annexures R-1 and R-2 annexed with reply filed by respondents Nos. 1 to 3, clearly reveals that vide office order dated 20.9.2018 and corrigendum dated 6.10.2018, respondents while constituting Enrolment Board, specifically provided marks to be awarded by the Board against each criterion. Vide corrigendum dated 6.10.2018 (Annexure R-2) separate Enrolment Boards came to be constituted for each District headed by the officer of the rank of Commandant. Respondents also placed on record an enrolment form submitted by one of the petitioners namely Mukesh Thakur to demonstrate that the terms and conditions of enrolment were also printed on the application form submitted by each individual with his signatures. Perusal of aforesaid form further reveals that marks were awarded on same form by the Enrolment Board against each criterion. Though, in the case at hand, petitioners have claimed that information sought for by them under RTI Act is yet awaited but delay, if any in furnishing information cannot be a ground/reason for this Court to infer

that the respondents committed illegalities and irregularities, while selecting respondents Nos. 4 to 8 in the selection process, wherein admittedly petitioners had also participated. Save and except bald statements/allegations having been made by the petitioners, there is no concrete evidence adduced on record by them suggestive of the fact that respondents Nos. 4 to 8 had either not cleared the fitness/driving test or not appeared in the selection process. There is no plausible reason rendered on record by the petitioners, which can persuade this Court to disbelieve the version put forth by the respondents in their reply, which has been admittedly filed under the signatures and affidavit of Commandant, Home Guard, 4th Battalion. Though, an attempt has been made on behalf of petitioners to refute the submissions/contentions raised by the respondents in their reply by way of filing rejoinder, but rejoinder, if read in its entirety, shows that besides reiterating their stand in the petition, no fresh material has been placed on record persuading this court to believe their version as put forth in the petition. Though this Court having perused reply filed on behalf of the respondents has no hesitation to conclude that the petitioners after having been declared unsuccessful in the selection process, have made an attempt to stall the entire selection process on very flimsy grounds, but even otherwise, petitioners after having been declared unsuccessful in the selection process cannot be permitted to raise dispute with

regard to method of selection adopted by the Enrolment Board. Though Mr. Suneet Goel, learned counsel for the petitioners, while making this court peruse documents annexed with the petition, made a serious attempt to persuade this Court that since the petitioners during selection process itself had apprised authorities concerned with regard to the alleged illegalities, petitioners cannot be estopped from filing this petition on the ground that they had already participated in the selection process but having perused averments contained in the petition as well as Annexure A-1 i.e. list of selected candidates for the posts of Drivers in 4th Battalion, this Court finds no merit in the aforesaid submission of Mr. Goel and as such, same is rejected being devoid of merit. It stands categorically averred in the petition that petitioners after having noticed names of respondents Nos. 4 to 8 in the selection list, which was admittedly signed in the month of November, 2018, lodged complaint with the Hon'ble Chief Minister and the Inspector-General, Home Guards. As per own case of the petitioners, interview/ driving test for the post was held on 15.10.2020 to 17.10.2018 but there is no material available on record suggestive of the fact that complaint if any ever came to be made by the petitioners during aforesaid period and as such, subsequent representations/complaints by the petitioners can be said to be an afterthought.

8. It is settled law that a process of selection cannot be challenged by an unsuccessful candidate by pointing to certain

irregularities here and there in the process of which he was aware, once the result is not to his liking. Relief, in such a case, is to be declined by applying the principles of estoppel, acquiescence and/or waiver. Reference in this regard can conveniently be made to the two recent judgments of the Hon'ble Supreme Court.

“10. In **Madras Institute of Development Studies and another vs. K. Sivasubramanian and others**(2016) 1 SCC 454, the Hon'ble Supreme Court has held as under:

12. The contention of the respondent no.1 that the short- listing of the candidates was done by few professors bypassing the Director and the Chairman does not appear to be correct. From perusal of the documents available on record it appears that short-listing of the candidates was done by the Director in consultation with the Chairman and also senior Professors. Further it appears that the Committee constituted for the purpose of selection consists of eminent Scientists, Professor of Economic Studies and Planning and other members. The integrity of these members of the Committee has not been doubted by the respondent- writ petitioner. It is well settled that the decision of the Academic Authorities about the suitability of a candidate to be appointed as Associate Professor in a research institute cannot normally be examined by the High Court under its writ jurisdiction. Having regard to the fact that the candidates so selected possessed all requisite qualifications and experience and, therefore, their appointment cannot be questioned on the ground of lack of qualification and experience. The High Court ought not to have interfered with the decision of the Institute in appointing respondent nos. 2 to 4 on the post of Associate Professor.

13. Be that as it may, the respondent, without raising any objection to the alleged variations in the contents of the advertisement and the Rules, submitted his application and participated in the selection process by appearing before

the Committee of experts. It was only after he was not selected for appointment, turned around and challenged the very selection process. Curiously enough, in the writ petition the only relief sought for is to quash the order of appointment without seeking any relief as regards his candidature and entitlement to the said post.

14. The question as to whether a person who consciously takes part in the process of selection can turn around and question the method of selection is no longer *res integra*.

15. In *Dr. G. Sarana vs. University of Lucknow & Ors.*, (1976) 3 SCC 585, a similar question came for consideration before a three Judges Bench of this Court where the fact was that the petitioner had applied to the post of Professor of Anthropology in the University of Lucknow. After having appeared before the Selection Committee but on his failure to get appointed, the petitioner rushed to the High Court pleading bias against him of the three experts in the Selection Committee consisting of five members. He also alleged doubt in the constitution of the Committee. Rejecting the contention, the Court held: (SCC P. 591, para 15) "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. This view gains strength from a decision of this Court in *Manak Lal vs. Prem Chand Singhvi*, AIR 1957 SC 425 where in more or less similar circumstances, it was held that the failure of the appellant to take the identical plea at the earlier stage of the proceedings created an effective bar of waiver against him. The following observations made therein are worth quoting: (AIR p.432, para 9) '9.It seems clear that the appellant wanted to take a chance to secure a favourable report from the tribunal which was

constituted and when he found that he was confronted with an unfavourable report, he adopted the device of raising the present technical point.' "

16. In *Madan Lal & Ors. vs. State of J & K & Ors.* (1995) 3 SCC 486, similar view has been reiterated by the Bench which held that: (SCC p. 493, para 9) "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 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 Supp SCC 285, 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."

17. In *Manish Kumar Shahi vs. State of Bihar*, (2010) 12 SCC 576, this Court reiterated the principle laid down in the earlier judgments and observed: (SCC p. 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."

18. In the case of Ramesh Chandra Shah and others vs. Anil Joshi and others, (2013) 11 SCC 309, recently a Bench of this Court following the earlier decisions held as under: (SCC p. 320, para 24) "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."

19. So far as the finding recorded by the Division Bench on the question of maintainability of the writ petition on the ground that the appellant Institute is a 'State' within the meaning of Article 12 of the Constitution, we are not bound to go into that question, which is kept open."

9. In Ashok Kumar and another vs. State of Bihar and others (2017) 4 SCC 357, a Bench of three Hon'ble Judges of the Hon'ble Supreme Court, has 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[4], 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* (2007) 8 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 also *Munindra Kumar v. Rajiv Govil* (1991) 3 SCC 368 and *Rashmi Mishra v. M.P. Public Service Commission* (2006) 12 SCC 724)".

14. The same view was reiterated in *Amlan Jyoti Borooh* (2009) 3 SCC 227, 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 Shah v. State of Bihar* (2010) 12 SCC 576, the same principle was reiterated in the following observations: (SCC p.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. and K.* (1995) 3 SCC 486, *Marripati Nagaraja v. State of Andhra Pradesh and Ors.* (2007) 11 SCC 522, *Dhananjay Malik and Ors. v. State of Uttaranchal and Ors.* (2008) 4 SCC 171, *Amlan Jyoti Borooh v. State of Assam* (2009) 3 SCC 227

and K.A. Nagamani v. Indian Airlines and Ors. (2009) 5 SCC 515."

16. In *Vijendra Kumar Verma v. Public Service Commission*, (2011) 1 SCC 150, 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*, (2013) 11 SCC 309, candidates who were competing for the post of Physiotherapist in the State of Uttarakhand 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, para 18) "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 Administration v. Jasmine Kaur*[11], 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* (2015) 11 SCC 493, 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 v. S.K. Shiva Subaramanyam's case (supra)*."

10. Since it stands duly established on record that the writ petitioners before laying challenge to selection process had participated in selection process without any demur, now it is not open for them to lay challenge to selection process after having been declared unsuccessful that too on the bald and baseless allegations.

11. Leaving everything aside this court finds from the record that pursuant to complaints filed by the petitioners to Hon'ble Chief Minister and Inspector-General, Home Guards, enquiry came to be held by Deputy Commandant General, Home Guards, HP, Shimla. After having discovered factum with regard to constitution of enquiry committee this Court directed learned Additional Advocate General vide order dated 8.10.2020 to place on record report of Enquiry Officer appointed by State Government to look into allegations of corruption in the selection process. Pursuant to order dated 8.10.2020, Additional Director-General-cum-Commandant General, Fire Services, Himachal Pradesh by way of an affidavit dated 16.10.2020 has placed on record, enquiry report submitted by

Enquiry Officer namely Anuj Tomer, Deputy Commandant-General, Himachal Pradesh Home Guards, Shimla. Perusal of enquiry report, as has been taken note herein above, clearly reveals that Enquiry Officer as named herein above was directed to enquire into media reports regarding illegalities committed in the recruitment of Volunteers/Drivers in District Sirmour, Himachal Pradesh. Enquiry report, if read in its entirety clearly reveals that Enquiry Officer while taking note of grievances of the petitioners as have been aired in the present petition not only recorded statements of petitioners/complainants but also dealt the same point wise. Enquiry Officer in his report has recorded that documents/record pertaining to selection process such as original forms, answer sheets and photographs of selection process held in the office of Commandant, 4th Battalion, Home Guards Nahan were carefully examined and statements of Members of the Selection Board were recorded after affording them opportunity of being heard. Enquiry Officer has concluded that as per forms of candidates, all the selected candidates have been declared successful including the ones named by the petitioners, by the MVI, who conducted the driving test.

12. Mr. Goel, while referring to aforesaid conclusion of Enquiry Officer though argued that since the entire selection process is under clout, same is required to be quashed, but having perused findings recorded by Enquiry Officer before arriving at a final conclusion, which clearly reveal that none of

the allegations of the petitioners was found to be genuine, coupled with the fact that recommendation to conduct fresh selection process was made solely with a view to dispel the doubts created in the minds of general public on account of publication in the media, this court finds no force in the aforesaid submission of Mr. Goel.

13. Since the petitioners were fully aware of the method of selection, criteria fixed by the respondents for selection to the post concerned and further that the allegations made by the petitioners have been found to be baseless, this court sees no occasion to interfere with the selection process. Besides this, in view of law laid down by Hon'ble Apex Court (supra), petitioners being unsuccessful candidates cannot be allowed to challenge the selection process, especially when they have failed to point out any illegality in the selection process, the selection process requires to be upheld.

14. In view of above petition is dismissed being devoid of any merit. Pending applications, if any, stand disposed of. Interim orders quashed.

(Sandeep Sharma)
Judge

November 13, 2020
(vikrant)