

(2009) 03 CAL CK 0008
In the Calcutta High Court
Case No : M.A.T. No. 30 of 2009

Monirul Islam Mondal

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 12-03-2009

Acts Referred:

Citation : (2009) 03 CAL CK 0008

Hon'ble Judges : Surinder Singh Nijjar, C.J; Biswanath Somadder, J

Bench : Division Bench

Advocate : Md. Harun Al Rashid, for the Appellant; Goutam Som for the State, Mr. Bilwadal Bhattacharyya and Mr. Ibrahim Sheikh for the Respdt. No. 5, for the Respondent

Final Decision : Dismissed

Judgement

1. We have heard the learned counsel for the parties at length. The petitioner was a candidate for the post of post in Amtala Annodamani Balika Vidyalaya (H.S.). He appeared for the interview on 23rd July, 2008. After appearing in the interview and after declaration of the result, he filed the present writ petition claiming that the process of selection was illegal. The appellant claims to have submitted a representation dated 29th July, 2008 before the competent authority stating therein that the typing test had been conducted illegally only to exclude him from the first position. He stated that the invigilator for the typing test did not belong to the school. He also stated that the school had provided obsolete typewriter to the candidates for the typing test. He suspects that the selected candidate has either been permitted five minutes time for typing, instead of the stipulated one minute or an already typed sheet has been handed over to the selected candidate. The writ petition has been dismissed by the learned single Judge by order dated 25th August, 2008 with the observations that since the petitioner had participated in the interview held on 23rd July, 2008, he cannot now be permitted to challenge the same.

2. Learned counsel for the respondents submits that the aforesaid view of the

learned single Judge is based on the law laid down by the Supreme Court in the case of Madan Lal and Others Vs. State of Jammu and Kashmir and Others, . We have perused the judgment of the Supreme Court in which it is categorically held as follows:

"8. It is now time for us to deal with the contentions canvassed by the learned senior counsel in support of the petition. We shall deal with these contentions seriatim.

Contention No. 1.

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. Up to 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 Vs. Akhilesh Kumar Shukla and Others, 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.

9. Therefore, the result of the interview test on merits cannot be successfully challenged by a candidate who takes a chance to get selected at the said interview and who ultimately finds himself to be unsuccessful...."

3. In view of the aforesaid ratio of law, the petitioner having participated in the interview cannot now be permitted to challenge the same. In our opinion, no injustice has been caused to the petitioner. In such circumstances, we find no merit in the appeal. The appeal is accordingly dismissed by treating the same as on day's list. The application for stay is also dismissed.