

(2018) 10 RAJ CK 0038
In the Rajasthan High Court
Case No : Civil Writs No. 22305 of 2018

Raj Kumar Meena @APPELLANT@Hash State Of Rajasthan

Date of Decision : 04-10-2018

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2018) 10 RAJ CK 0038

Hon'ble Judges : Inderjeet Singh, J

Bench : Single Bench

Advocate : Hemraj Rodiya, James Bedi

Final Decision : Dismissed

Judgement

1. Counsel for the petitioner submits that the Rajasthan Public Service Commission (hereinafter referred to as "RPSC") has issued the advertisement on 12.01.2015 wherein certain backlog vacancies of SC/ST were shown. Counsel further submits that again vide corrigendum dated 04.03.2016 the backlog vacancies of SC/ST were again shown. Counsel further submits that another specific corrigendum was also issued regarding the backlog vacancies of SC/ST, however, in the corrigendum issued on 01.09.2016, the back-log vacancies in different subjects relating to SC/ST category were not shown by the RPSC. Aggrieved by such action of the respondent the petitioner has filed the present writ petition.
2. Counsel further submits that non-disclosure of the backlog vacancies relating to SC/ST category by the respondents is arbitrary in nature and no reasons whatsoever has been assigned by the respondents while doing so and thus the corrigendum dated 01.09.2016 deserves to be quashed and set aside.
3. Heard counsel for the petitioner and perused the record.

4. The writ petition filed by the petitioner deserves to be dismissed for the reasons; firstly, the advertisement in question was issued by the RPSC on 12.01.2015 and last corrigendum was issued on 01.09.2016 and the petitioner has filed the present writ petition in the year 2018 and the petitioner has not filed the writ petition prior to declaring the result of the written test; secondly, the petitioner has participated in the selection process and admittedly, the result of the post in question was declared by the RPSC in the month of February, 2018. In my considered view, once the petitioner has participated in the selection process, the petitioner is estopped from challenging the question regarding backlog vacancies in view of the corrigendum dated 01.09.2016 and in view of the judgment passed by the Honâ??ble Supreme Court in the matter of Madras Institute of Development Studies and Anr. Vs. K. Sivasubramaniyan and Ors., reported in 2016 (1) SCC 454, where in it has been held as under:-

â??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 G. Sarana V. University of Lucknow, a similar question came up for consideration before a three-Judge 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)

â??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

case 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 and Ors. v. State of J&K*, 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* 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 v. State of Bihar*, this Court reiterated the principle laid down in the earlier judgments and observed:

“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.â??

18. In the case of Ramesh Chandra Shah and Ors. v. Anil Joshi, recently a Bench of this Court following the earlier decisions held as under:

â??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.â??

5. In that view of the matter, the writ petition stands dismissed.