

**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR
BEFORE
HON'BLE SHRI JUSTICE GURPAL SINGH AHLUWALIA
ON THE 18th OF AUGUST, 2023
WRIT PETITION No. 19099 of 2023**

BETWEEN:-

1. SUMOKSHI TIWARI D/O S.P. TIWARI, AGED ABOUT 25 YEARS, OCCUPATION: PREPARING FOR JOB R/O E-33 PRIDE CITY KATARA HILLS DISTRICT BHOPAL (MADHYA PRADESH)

2. BHUPENDRA KURMI S/O CHANDAN SINGH KURMI, AGED ABOUT 28 YEARS, OCCUPATION: PREPARING FOR JOB R/O 07, KARHAD TODATARAFDAR, SAGAR DISTRICT SAGAR (MADHYA PRADESH)

.....PETITIONERS

(BY SHRI DINESH SINGH CHOUHAN - ADVOCATE)

AND

1. THE STATE OF MADHYA PRADESH THROUGH ITS PRINCIPAL SECRETARY MEDICAL EDUCATION DEPARTMENT VALLABH BHAWAN BHOPAL (MADHYA PRADESH)

2. THE COMMISSIONER, DIRECTORATE OF AYUSH DEPARTMENT GROUND FLOOR, D-WING, SATPUDA BHAWAN, BHOPAL (MADHYA PRADESH)

3. THE ASSISTANT DIRECTOR, AYUSH DEPARTMENT GROUND FLOOR, D-WING, SATPUDA BHAWAN, BHOPAL (MADHYA PRADESH)

PRADESH)

.....RESPONDENTS

(BY SHRI K.S. BAGHEL - GOVERNMENT ADVOCATE)

This petition coming on for admission this day, the court passed the following:

ORDER

This petition under Article 226 of Constitution of India has been filed seeking the following reliefs:

I. Issue a writ in the nature of mandamus directing the respondent No.3 to consider the registration certificate of the petitioners which are registered under Rehabilitation Council of India, New Delhi for the post of Audiometist (Post Code-23), in the interest of justice.

II. Issue a writ in the nature of mandamus to directing the respondents to give the appointment to the petitioners on the post of Audiometist (Post Code-23) because their name is appeared in the top-10 applicant list at Sr. No.2 and 3, in the interest of justice.

III. Issue any other writ, order or direction as this Hon'ble Court deem fit.”

2. It is submitted by counsel for petitioners that an advertisement was issued for Group 5 (Paramedical and Nursing Group) Combined Recruitment Test-2022 by conducting the examination through Employees Selection Board, Bhopal. Petitioners submitted their application forms for the post of Audiometrist (Post Code - 23) by online. Admit cards were issued in favour of petitioners. Petitioners appeared in the examination and they were declared qualified. Name of

petitioner No.1 appeared at Sr.No.2 of the merit list, whereas name of petitioner No.2 appeared at Sr.No.3 of the merit list. By letter dated 09.01.2023 issued by respondent No.2, candidates were directed for verification of documents. Respondent No.2 issued another letter dated 05.07.2023 pointing out the names of selected candidates, who were required to appear from 10.07.2023 to 12.07.2023 in the Government Autonomous Yunani Mahavidyalaya Menit Parishar, Bhopal for verification of documents. However, names of petitioners did not appear in the said list. Accordingly, petitioners approached respondent No.2 and thereafter, list containing the names of disqualified candidates was issued in which name of petitioner No.1 is mentioned at Sr.No.7 and name of petitioner No.2 is mentioned at Sr.No.8, according to which petitioners were declared disqualified on the ground that they do not hold minimum qualifications as required under the Rules as they are not having registration with Madhya Pradesh Paramedical Council. It is further submitted by counsel for the petitioners that petitioners have passed BASLP (Bachelor in Audiology & Speech Language Pathology) from New Delhi and accordingly, they sought information under R.T.I. from the office of Registrar, Madhya Pradesh Paramedical Council, who by letter dated 18.05.2023 informed that BASLP course is not included in the courses run by M.P. Paramedical Council. It is submitted that petitioners had got themselves registered with Rehabilitation Council of India, New Delhi because in Madhya Pradesh there is no institution running the course of BASLP. Under these circumstances, it is submitted that condition imposed by respondent in the advertisement to the effect that candidates must have registration with M.P. Paramedical Council is bad. If the course of BASLP is not available in the State of

Madhya Pradesh, then petitioners cannot be disqualified only on the ground that they are not registered with M.P. Paramedical Council.

3. *Per contra*, petition is vehemently opposed by counsel for State. It is submitted that so far as conditions mentioned in the advertisement is concerned, petitioners after having participated in the recruitment process, cannot assail the same as now they are bound by principle of estoppel. It is further submitted that it is not the case of petitioners that for the post of Audiometrist except the course BASLP, no other course is available in the State of Madhya Pradesh. Merely because petitioners have passed BASLP from Rehabilitation Council of India, New Delhi, the same cannot be treated as par with the subjects run by Madhya Pradesh Paramedical Council.

4. Heard learned counsel for parties.

5. The first contention of counsel for petitioner is that requirement of registration with Madhya Pradesh Paramedical Council is bad in law.

6. So far as the advertisement is concerned, it is fairly conceded by counsel for petitioner that he has not filed the complete copy of advertisement and accordingly, he provided the relevant part of advertisement which deals with the post of Audiometrist. As per advertisement, educational qualification required was Higher Secondary Examination 10+2 with Physics, Chemistry and Biology subjects or equivalent examination, having certificate in Audiometrist and **registration with Madhya Pradesh Paramedical Council**. Petitioners participated in the recruitment process knowingly well about the aforesaid qualifications.

7. Supreme Court in the case of **Madan Lal and others v. State of J&K and others**, reported in (1995) 3 SCC 486 has held as under:

“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 : 1986 SCC (L&S) 644 : 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.

10. 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. It is also to be kept in view that in this petition we cannot sit as a court of appeal and try to reassess the relative merits of the candidates concerned who had been assessed at the oral interview nor can the petitioners successfully urge before us that they were given less

marks though their performance was better. It is for the Interview Committee which amongst others consisted of a sitting High Court Judge to judge the relative merits of the candidates who were orally interviewed, in the light of the guidelines laid down by the relevant rules governing such interviews. Therefore, the assessment on merits as made by such an expert committee cannot be brought in challenge only on the ground that the assessment was not proper or justified as that would be the function of an appellate body and we are certainly not acting as a court of appeal over the assessment made by such an expert committee.”

8. Supreme Court in the case of **K.A. Nagamani v. Indian Airlines and others**, reported in **(2009) 5 SCC 515** has held as under:

“53. Yet another aspect of the matter: that the appellant admittedly had participated in the similar selection process for erstwhile Grades 15 and 16, Manager (Maintenance/Systems) and Senior Manager (Maintenance/Systems) respectively. The Corporation had given adequate opportunity to the appellant to compete with all other eligible candidates at the selection for consideration of the case of all eligible candidates to the post in question.

54. The Corporation did not violate the right to equality guaranteed under Articles 14 and 16 of the Constitution. The appellant having participated in the selection process along with the contesting respondents without any demur or protest cannot be allowed to turn round and question the very same process having failed to qualify for the promotion.

55. In *Madan Lal v. State of J&K* [(1995) 3 SCC 486 : 1995 SCC (L&S) 712 : (1995) 29 ATC 603] this Court observed: (SCC p. 493, paras 9-10)

“9. ... 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....

10. 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.”

Reference may also be made to the decision of this Court in *Chandra Prakash Tiwari v. Shakuntala Shukla* [(2002) 6 SCC 127 : 2002 SCC (L&S) 830].”

9. Supreme Court in the case of **Chandra Prakash Tiwari and others v. Shakuntala Shukla and others**, reported in (2002) 6 SCC 127 has held as under:

“32. In conclusion, this Court recorded that the issue of estoppel by conduct can only be said to be available in the event of there being a precise and unambiguous representation and it is on that score a further question arises as to whether there was any unequivocal assurance prompting the assured to alter his position or status — the situation, however, presently does not warrant such a conclusion and we are thus not in a position to lend concurrence to the contention of Dr Dhavan pertaining to the doctrine of estoppel by conduct. It is to be noticed at this juncture that while the doctrine of estoppel by conduct may not have any application but that does not bar a contention as regards the right to challenge an appointment upon due participation at the interview/selection. It is a remedy which stands barred and it is in this perspective in *Om Prakash Shukla v. Akhilesh Kumar Shukla* [1986 Supp SCC 285 : 1986 SCC (L&S) 644] a three-Judge Bench of this Court laid down in no uncertain terms that when a candidate appears at the examination without protest and subsequently found

to be not successful in the examination, question of entertaining a petition challenging the said examination would not arise.

33. Subsequently, the decision in *Om Prakash* [1986 Supp SCC 285 : 1986 SCC (L&S) 644] stands followed by a later decision of this Court in *Madan Lal v. State of J&K* [(1995) 3 SCC 486 : 1995 SCC (L&S) 712 : (1995) 29 ATC 603] wherein this Court stated as below : (SCC p. 493, paras 9-10)

“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 : 1986 SCC (L&S) 644] 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.

10. 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. It is also to be kept in view that in this petition we cannot sit as a court of appeal and try to reassess the relative merits of the candidates concerned who had been assessed at the oral interview nor can the petitioners successfully urge before us that they were given less marks though their performance was better. It is for the Interview Committee which amongst others consisted of a sitting High Court Judge to judge the relative merits of the candidates who were orally interviewed, in the light of the guidelines laid down by the relevant rules governing such interviews. Therefore, the assessment on merits as made by such an expert committee cannot be brought in challenge only on the ground that the assessment was not proper or justified as that would be the function of an appellate body and we are certainly not acting as a court of appeal over the assessment made by such an expert committee.”

34. There is thus no doubt that while question of any estoppel by conduct would not arise in the contextual facts but the law seems to be well settled that in the event a candidate appears at the interview and participates therein, 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 there was some lacuna in the process.”

10. Supreme Court in the case of **Union of India and another v. N. Chandrasekharan and others**, reported in **(1998) 3 SCC 694** has held as under:

“**13.** We have considered the rival submissions in the light of the facts presented before us. It is not in dispute that all the candidates were made aware of the procedure for promotion before they sat for the written test and before they appeared before the Departmental Promotion Committee. Therefore, they cannot turn around and contend later when they found they were not selected by challenging that procedure and contending that the marks prescribed for interview and confidential reports are disproportionately high and the authorities cannot fix a minimum to be secured either at interview or in the assessment on confidential report.....”

11. It is not the case of petitioners that requirement of registration with Madhya Pradesh Paramedical Council is violative of any statutory provision of law or regulations. The only exception to estoppel is that estoppel cannot overwrite a law and since petitioners could not point out anything which may bring their cases within the aforesaid exception, therefore, it is held that after having participated in the recruitment process, they cannot challenge any of the conditions of the advertisement. Therefore, after having declared disqualified, the petitioners are now estopped from challenging the condition for registration with Paramedical Council. Admittedly, the petitioners are not registered with M.P. Paramedical Council and they do not fulfill all required qualifications as required in the advertisement.

12. This Court is of considered opinion that no case is made out warranting interference.

13. Petition fails and is hereby **dismissed**.

(G.S. AHLUWALIA)
JUDGE

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