

from the Principal of the petitioner, a Government school present in Court that the post of Water Carrier in the interregnum was occupied by one Soma Devi, who was a regular hand and retired from service in November, 2014 on reaching the age of superannuation, which makes it a lot easier for the award to be satisfied since work is available and required in the school and the vacancy has not been filled so far.

(5) In the result the writ fails and is dismissed as there is found no merit in it which warrants interference on principles enunciated in binding precedents noticed supra since the impugned award suffers from none of the vices which might vitiate it. The interim order regarding Section 17-B of the ID Act shall stand vacated. The petitioner will revert to her original position on the date of illegal and void termination caused by breach of law in the Industrial Disputes Act, 1947. Now the award of reinstatement etc. be implemented without delay and compliance report submitted within two months for the perusal of the Court.

Manpreet Sawhney

Before M. Jeyapaul & Darshan Singh, JJ.

AMARJEET KAUR—Petitioner

versus

CENTRAL ADMINISTRATIVE TRIBUNAL CHANDIGARH

BENCH—Respondents

CWP No.19241 of 2014

October 30, 2015

A) *Constitution of India, 1950—Arts.14, 16 and 226—Selection process—Petitioner participated in the entire selection process—Declared unsuccessful—Cannot turn around and subsequently contend that the process of interview was unfair and selection committee was not properly constituted.*

B) *Constitution of India, 1950—Judicial Review—Selection process—No specific allegation has been made against any members of the selection committee—Court cannot substitute its opinion to reassess the merits of the candidate—Members of the Recruitment Committee are the best judge to award the marks in the interview taking into consideration all the relevant factors and suitability for the post.*

Held that, this Court also in a latest judgment titled as *Mukesh Bala Vs. State of Haryana and others 2015 (1) SLR 290*, has laid down that merely because some of the candidates, who had secured higher marks in the academic head of criteria, have been given lesser marks in the interview would not *ipso facto* lead to a conclusion that this exercise has been done intentionally especially when none of the members of the selection committee has been impleaded as respondent nor are specific allegations in this regard reflected in the petition or pleaded. In view of the aforesaid ratio of law, mere this fact that the petitioner has secured more marks in the written test, is no ground to conclude and declare the selection process invalid or illegal unless there is anything to show that the entire selection was vitiated on account of *mala fides* or bias or interview committee members had acted with an ulterior motive from the very beginning and the whole selection process was a camouflage. In the instant case only vague allegations have been mentioned in the petition that it is a case of favouritism as the private respondent was working in the department of official respondents on contract basis. No specific allegation has been made against any members of the selection committee. It is evident from the proceedings dated 13.08.2013 (Annexure A-6) that there were 7 members of the selection committee including the representative of the Department of Personnel and Zila Sainik Board. Except the Director Health and Family Welfare, no other member of the Recruitment Committee has been impleaded as party either in the Original Application or in the present writ petition. Moreover, as already mentioned there are no specific allegation against any member of the Recruitment Committee for showing any favour to the private respondent. As already mentioned the members of the Recruitment Committee are the best judge to award the marks in the interview taking into consideration all the relevant factors and suitability for the post. While exercising the judicial review, the Court cannot substitute its opinion to re-assess the merits of the candidate. Thus, no fault can be found with the marks awarded to the private respondent.

(Para 24)

Further held that, it is also not disputed that the present petitioner has participated in the entire selection process and when she was declared unsuccessful she filed the Original Application before the learned Tribunal. It is now well settled that if a candidate takes a calculated chance and appears at the interview then because the result of the interview is not palatable to him, he cannot turn around and subsequently contend that the process of interview was unfair or

selection committee was not properly constituted. Reference can be made to case *Om Prakash Shukla Vs. Akhilesh Kumar Shukla and Ors.*, AIR 1986 SC 1043.

(Para 25)

Aman Dhir, Advocate
for the petitioner.

I.P.S. Doabia, Advocate
for respondent No.2.

Navjot Singh, Advocate
for respondent No.3.

Vikas Chaudhary, Advocate
for respondent No.4.

DARSHAN SINGH, J.

(1) The present Civil Writ Petition under Articles 226/227 of the Constitution of India has been filed by petitioner Amarjeet Kaur for issuance of a writ in the nature of certiorari for setting aside the order dated 31.07.2014, passed by the leaned Central Administrative Tribunal, Chandigarh Bench, Chandigarh (hereinafter referred to as the 'Tribunal'), the merit-cum-selection list for the post of Clerk (SC) on regular basis dated 13.08.2013 and the proceedings of the Meeting of the Direct Recruitment Committee held on 13.08.2013 for the selection of one post of Clerk SC category vide which private respondent No.4 Nishu has been illegally selected. It is further prayed that writ in the nature of mandamus be issued directing the official respondents to re-check/re-evaluate the typing test given by the private respondent and to verify the factum of tampering with in the column showing marks secured by the private respondent in the written test.

(2) As per the averments in the writ petition, the Health Department of Chandigarh Administration issued the Vacancy Notice dated 14.12.2012 to fill one post of Clerk (regular) of Scheduled Caste category and one post of Peon (regular). The selection criteria for the post of Clerk consisted of three stages.

- (i) Type Writing Test (qualifying test) with 30 words per minute speed in English,
- (ii) Written Test 90 marks
- (iii) Interview 10 marks

(3) The petitioner as well as private respondent qualified the type test held on 30.06.2013. All the candidates who had qualified the typing test appeared in the written test held on 03.08.2013. The petitioner scored the highest marks i.e. 72 out of 90 and private respondent scored 67 marks out of 90. Thereafter, the interview was held on 13.08.2013. Three candidates who have qualified for interview namely the petitioner, private respondent No.4 Nishu and Sunil Vimal were called for interview. In the said interview, the petitioner was awarded 04 marks out of 10 and private respondent was awarded 8.5 marks out of 10. As such, the private respondent scored a total 76.5 marks and petitioner scored total 76 marks, which is marginally below the marks awarded to the private respondent. The private respondent was selected to the post of Clerk (Regular) Scheduled Caste category as per the merit-cum-selection list dated 13.06.2013 and the proceedings of the Meeting of the Direct Recruitment Committee held on 13.08.2013.

(4) It is further pleaded that the type test of the private respondent was not properly checked, which was the qualifying test. Many over-typings and spelling mistakes were not counted while checking. If the same were considered, she would not have even qualified for interview. The copy of the written examination shows that there is some tampering with in the answering sheet of the private respondent. The selection of the private respondent is clear-cut case of favouritism as the private respondent was working in the respondent department on contract basis. At each and every step of selection process, the official respondents had tried to favour the private respondent in one way or the other. The other two candidates, who participated in the interview, were awarded very low marks, whereas the private respondent was awarded very high marks i.e. 8.5., due to which she got marginally more marks than the petitioner i.e. only 0.5 marks. The petitioner approached the learned Tribunal but the Original Application filed by the petitioner has been dismissed by the learned Tribunal vide impugned order dated 31.07.2014. Hence, this petition.

(5) Respondents No.2 & 3 (the official respondents) contested the writ petition on the grounds inter alia that the selection for the post of Clerk reserved for Scheduled Caste category was made on the recommendation of the Department Selection Committee constituted six members including the expert from the Department of Personnel and the Office of Zila Sainik Board, U.T. Chandigarh. The Selection Committee adjudged the practical knowledge of the candidates. The criteria fixed for selection and other requirements have been taken into

consideration at the time of selection like educational qualification, experience and age etc. The proper procedure was followed in the selection process. The petitioner secured lower marks in the selection process and was not considered fit for appointment. The answering respondents further pleaded that there is no question of any tampering with of the examination sheets. No favouritism of any kind was shown to any candidate. The selection was purely on the basis of selection process and the marks obtained by the candidates in the various stages of selection. There was no question of any official respondent helping or trying to favour any candidate. Interview was carried out by the selection committee who were experts in their respective fields.

(6) The private respondent also filed the separate written statement taking the preliminary objections that the petitioner has not approached the Court with clean hands, she has no *locus standi* to approach this Court, she is bound by the principle of estoppel and acquiesce. It was further pleaded that it is totally unfair on the part of the petitioner that after taking a chance to get herself selected in the selection process, she is now assailing the selection process as the selection has not gone in her favour. All other pleas raised in the writ petition were controverted.

(7) We have heard Mr. Aman Dhir, Advocate, learned counsel for the petitioner, Mr. I.P.S. Doabia, Advocate, learned counsel for respondent No.2, Mr. Navjot Singh, Advocate, learned counsel for respondent No.3, Mr. Vikas Chaudhary, Advocate, learned counsel for respondent No.4 and have meticulously gone through the paper-book.

(8) It is also pertinent to mention that original record of the selection process was also directed to be produced and has been perused by us, which was returned back to learned counsel for the official respondents.

(9) Mr. Aman Dhir, Advocate, learned counsel for the petitioner contended that the private respondent was already serving with the official respondents on contract basis. The official respondents had favoured her at every step of the selection process. The selection of the private respondent suffers from favouritism. He contended that various mistakes in her type test, which was a qualifying test, have been ignored only to make her eligible to take the written test and participate in the interview, otherwise she would have been out of the race. He further contended that the petitioner has scored the maximum marks in the written test out of all the candidates. She got 72 marks in the written test out of 90, whereas respondent No.4 obtained only 68 marks. But in

order to get the private respondent selected, she was awarded very high marks i.e. 8.5 in the interview out of 10 marks, whereas the petitioner was awarded only 4 marks. The other candidate was also awarded 4 marks, which clearly shows that very high marks have been awarded to the private respondent in the interview just to cross the marks obtained by the petitioner, which clearly shows the favouritism of the official respondents and the entire selection process is rendered vitiated and is illegal.

(10) He further contended that the petitioner has obtained the copy of the written test answer-sheet of the petitioner and private respondent under the provisions of the Right to Information Act, 2005 (hereinafter referred to as the RTI Act), which shows that the answer-sheet of the private respondent was not even signed by the evaluator and invigilator. Even the columns for marks scored were also lying blank. In the written statement filed by the official respondents also this fact has not been specifically denied, rather it is pleaded that their signatures were not essential. He contended that when the original record was produced in the Court, these columns were found duly filled in, which shows that the record has been tampered with. Thus, he pleaded that the selection of respondent No.4 is liable to be set aside and the Tribunal has wrongly dismissed the Original Application filed by the petitioner.

(11) On the other hand, learned counsel for the respondents contended that the selection was carried out in a fair manner as per the criteria of the selection process. There is no material to show that any favour was shown to private respondent. The marks in the interview depend upon the performance of the candidate at the time of the interview. The Recruitment Committee consisting of experts is the best judge to assess the suitability of the candidates and the Court cannot act as an appellate authority to re-assess the merits of the candidates.

(12) They further contended that mere negligence on the part of the officials in supplying the copies under the provisions of the RTI Act cannot render the selection process illegal as no mistake in the marks awarded in the written test could be pointed out. They further contended that even the mistakes in the type test of the petitioner have been ignored. Those mistakes were the result of some mechanical defect in the typing machines. Thus, they contended that there is no illegality in the selection process and the Original Application filed by the petitioner has been rightly dismissed by the learned Tribunal.

(13) We have duly considered the aforesaid contentions.

(14) The facts are not disputed that the Health Department of Chandigarh Administration has advertised one post of Clerk (regular) of Scheduled Caste category vide advertisement dated 14.12.2012. As per the advertisement, the selection criteria for the post of Clerk was consisting of following three stages:

- (i) Typewriting Test (Qualifying Test),
- (ii) Written Test 90 Marks,
- (iii) Interview 10 Marks

(15) It is not disputed that the petitioner as well as the private respondent have cleared the qualifying typing test and further participated in the written test and interview. In the written test, the petitioner obtained 72 marks i.e. 57 marks in Part-I and 15 marks in Part-II. Private respondent Nishu obtained 68 marks i.e. 52 marks in Part-I and 16 marks in Part-II. The petitioner, private respondent and one Sunil Vimal were called for interview. Petitioner obtained 4 marks, private respondent obtained 8.5 marks and Sunil Vimal obtained 4 marks in the interview out of 10 marks. The petitioner obtained total 76 marks and private respondent Nishu obtained total 76.5 marks and was selected.

(16) The petitioner is assailing the selection of private respondent on the grounds that her mistakes in the typing test have been ignored; secondly, that she has been awarded extraordinary higher marks in the interview just to cross over the marks obtained by the petitioner, who was awarded very less marks in the interview and thirdly, that it is a clear-cut case of favouritism as private respondent had already been working in the respondent department on the post of Data Entry Operator on contract basis.

(17) It is settled principle of law that the scope of judicial review in the matter of appointments and selection is limited. The decision of the selection committee can be interfered on the limited grounds such as illegality or patent material irregularity in the constitution of the selection committee, the procedure adopted by the selection committee vitiating the selection or the proved *mala fide* affecting the selection process. The Court cannot sit in appeal over the decision of the selection committee.

(18) Vide order dated 09.10.2015, the officer who has furnished the information under the RTI Act and the evaluator of the typing test were directed to be present in the Court to clarify the position. At the

time of hearing, both these officials have come present. The omission in the written test answer-sheet of private respondent with respect to signature of evaluator, invigilator and the marks, has been stated to be an inadvertent mistake on the part of the officials who prepared the copies. They also took the stand that the photostat machine in their office might have skipped to Xerox the said wording which were written in the red ink. But we were not satisfied with the aforesaid explanations given by the officer concerned to supply the information under the provisions of RTI Act as it is a responsible statutory duty. The Public Information Officer performing that statutory duty is under legal obligation to properly check and certify the copies/information being supplied under the provisions of the RTI Act but herein in this case, they have neglected to perform this important statutory duty. However, this omission or negligence on their part is not going to affect the merits of the case. The private respondent had secured 68 marks in the written test. Learned counsel for the petitioner has not been able to point out that the marks so awarded to the private respondent were wrong. Annexure A-4 is the copy of the result of the written test held on 03.08.2013, which has also been obtained by the petitioner under the provisions of the RTI Act. In this result for the written test, the marks of the petitioner have been shown to be 72 and that of private respondent as 68. There is no cutting or overwriting in their scores. This result is signed by the Principal, Government Industrial Training Institute, Chandigarh and one Shri Arun Kumar on 03.08.2013 itself. So, there is no discrepancy or mistake in the marks awarded to the private respondent in the written test.

(19) As far as the type test is concerned, it was only a qualifying test. In order to be eligible to compete, a candidate was required to have the speed of 30 words per minute in English typewriting. The copy of the typing test of the petitioner is available at page 52 of the paper-book. Which shows that she was having the speed of 29.6 w.p.m., which has been taken to be 30 w.p.m., whereas the private respondent was having the speed of 30.8 w.p.m. No doubt some mistakes in the typing test of respondent No.4 have not been counted, but same is the position of the typing test of the petitioner. The concerned official who has evaluated the typing test has explained that some mistakes have occurred due to mechanical defects in the typing machines. Learned counsel for the petitioner cannot dispute that certain mistakes in the type test of petitioner Amarjeet Kaur have also not been counted by the evaluator. If those mistakes would have been counted, she would also have been out of the race. So, no prejudice has been caused to the

present petitioner due to ignoring of some mistakes in the type test of the private respondent as the petitioner has also got the similar benefit.

(20) The copy of the merit-cum-selection list as well as proceedings of the Meetings of the Recruitment Committee held on 13.08.2013 shows that petitioner was awarded 04 marks in the interview out of 10 marks, whereas the private respondent was awarded 8.5 marks. The question arises as to whether the Court can interfere in the process of awarding the marks in the oral interview and can re-assess the merits of the candidates. The marks in the oral interview/viva voce test depend upon various factors such as the presentation by the candidate at the time of the interview, his/her personality, aptitude, knowledge and suitability to the post concerned. The members of the Recruitment Committee, before whom the candidate had appeared, are the best judge to assess the aforesaid mentioned factors to award the marks in the interview/viva voce test. Mere this fact that the petitioner has obtained more marks in the written test is no ground to found fault with the marks awarded to the private respondent in the interview. The Hon'ble Supreme Court in case *Ashok Kumar Yadav versus State of Haryana*¹ has laid down as under:-

“There cannot be any hard and fast rule regardin the precise weight to be given to the viva voce test as against the Written Examination. It must vary from service, the minimum qualifications prescribed, the age group from which selection is to be made, the body to which the task of holding the viva voce test is proposed to be entrusted to an a host of other factors. It is essentially a matter of determination by experts.”

(21) The Hon'ble Supreme Court in case *Dalpat Abasaheb Solunke versus Dr. B.S. Mahajan*² has laid down as under:-

“It is needless to emphasise that it is not the function of the Court to hear appeals over the decisions of the Selection Committees and to scrutinize the relative merits of the Candidates. Whether a candidate is fit for a particular post or not has to be decided by the duly constituted Selection Committee which has the expertise on the subject. The Court has no such expertise. The decision of the Selection Committee can be interfered with only on limited grounds,

¹ AIR 1987 SC 593

² AIR 1990 SC 434

such as illegality or patent material irregularity in the Constitution of the Committee or its procedure vitiating the selection, or proved mala fides affecting the selection etc.”

(22) Again the Hon'ble Apex Court in case *Madan Lal and others Vs. State of Jammu & Kashmir*³ laid down as under :-

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 relevant merits of the concerned candidates 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.”

(23) The Hon'ble Apex Court in case *Durga Devi and another versus State of H.P.*⁴, has categorically laid down that the Tribunal by itself cannot scrutinising the comparative merits of the candidates for fitness for the post. It is the function of the selection committee.

(24) This Court also in a latest judgment titled as *Mukesh Bala versus State of Haryana and others*⁵, has laid down that merely because some of the candidates, who had secured higher marks in the academic head of criteria, have been given lesser marks in the interview would not *ipso facto* lead to a conclusion that this exercise has been done intentionally especially when none of the members of the selection committee has been impleaded as respondent nor are specific

³ AIR 1995 SC 1088

⁴ AIR 1997 SC 2618

⁵ 2015 (1) SLR 290

allegations in this regard reflected in the petition or pleaded. In view of the aforesaid ratio of law, mere this fact that the petitioner has secured more marks in the written test, is no ground to conclude and declare the selection process invalid or illegal unless there is anything to show that the entire selection was vitiated on account of *mala fides* or bias or interview committee members had acted with an ulterior motive from the very beginning and the whole selection process was a camouflage. In the instant case only vague allegations have been mentioned in the petition that it is a case of favouritism as the private respondent was working in the department of official respondents on contract basis. No specific allegation has been made against any members of the selection committee. It is evident from the proceedings dated 13.08.2013 (Annexure A-6) that there were 7 members of the selection committee including the representative of the Department of Personnel and Zila Sainik Board. Except the Director Health and Family Welfare, no other member of the Recruitment Committee has been impleaded as party either in the Original Application or in the present writ petition. Moreover, as already mentioned there are no specific allegation against any member of the Recruitment Committee for showing any favour to the private respondent. As already mentioned the members of the Recruitment Committee are the best judge to award the marks in the interview taking into consideration all the relevant factors and suitability for the post. While exercising the judicial review, the Court cannot substitute its opinion to re-assess the merits of the candidate. Thus, no fault can be found with the marks awarded to the private respondent.

(25) It is also not disputed that the present petitioner has participated in the entire selection process and when she was declared unsuccessful she filed the Original Application before the learned Tribunal. It is now well settled that if a candidate takes a calculated chance and appears at the interview then because the result of the interview is not palatable to him, he cannot turn around and subsequently contend that the process of interview was unfair or selection committee was not properly constituted. Reference can be made to case *Om Prakash Shukla versus Akhilesh Kumar Shukla and Ors.*⁶.

(26) Thus, keeping in view our aforesaid discussion, we do not find any illegality in the selection process adopted by the official respondent for the post of Clerk (regular) Scheduled Caste category in

⁶ AIR 1986 SC 1043

which private respondent Nishu was declared successful and appointed to the said post. Consequently, the impugned order dated 31.07.2014 passed by the learned Tribunal does not suffer from any illegality calling for any interference by this Court.

(27) Resultantly, the present writ petition has no merits and the same is hereby dismissed.

Manpreet Sawhney