



RAJASTHAN HIGH COURT  
**HIGH COURT OF JUDICATURE FOR RAJASTHAN**  
**BENCH AT JAIPUR**

S.B. Civil Writ Petition No. 15251/2019

Babulal Sahu S/o Shri Radheyshyam Sahu, Aged About 47 Years,  
R/o Saray Mohalla Near Pashu Chikitsalaya, New Bus Stand,  
Rajgarh, District Alwar.

----Petitioner

Versus

1. State Of Rajasthan, Through Its Principal Secretary,  
Education Department, Government Of Rajasthan,  
Government Secretariat, Jaipur.
2. Director, Secondary Education, Rajasthan, Bikaner.
3. Secretary, Rajasthan Public Service Commission,  
Rajasthan, Ajmer.

----Respondents

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For Petitioner(s) : Mr. B.B.L. Sharma

For Respondent(s) : Mr. Nitin Jain

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**HON'BLE MR. JUSTICE INDERJEET SINGH**

**Order**

**12/12/2023**

This writ petition has been filed by the petitioner with the following prayers:-

“it is, therefore, prayed that this writ petition may kindly be allowed and by appropriate writ, order or directions, the respondents may be directed to consider the case of the petitioner for her appointment on the post of Special Teacher (Sanskrit) in pursuance of advertisement dated 7.1.2016 under OBC LD (PH category) and issue appointment order in favour of the petitioner with all consequential benefits.

That any other relief which this Hon'ble court may deem fit in favour of the petitioner may also be awarded to the petitioners.



That the cost of the writ petition may also be kindly awarded in favour of the petitioners.”

In pursuance to the advertisement dated 07.01.2016, the petitioner applied for the post of Senior Teacher, Special Education (Sanskrit). Grievance of the petitioner is that although the petitioner is having 74% locomotive disability, however, the respondents while issuing advertisement, no post under his category was reserved.

Counsel for the petitioner submits that under the Physical Handicapped Category, so many posts are lying vacant and counsel prayed for giving him appointment on the said post.

Counsel appearing on behalf of the respondent-RPSC opposed the writ petition and submitted that there was no post shown available in the advertisement for the category to which the petitioner belongs. Counsel further submits that after participating in the selection process, the petitioner is estopped to challenge the terms and conditions of the advertisement.

The Hon'ble Supreme Court in the matter of **Ashok Kumar & Anr. Vs. State of Bihar & Ors.** reported in **(2017) 4 Supreme Court Cases 357** in paras No.13 to 18 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 (2002), 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* MANU/SC/7926/2007 : (2007) 3 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 *Munindra Kumar v. Rajiv Govil* (1991) and *Rashmi Mishra v. M.P. Public Service Commission*).

14. The same view was reiterated in *Amlan Jyoti Borroah* 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 ShahI v. State of Bihar*, the same principle was reiterated in the following observations:(SCCp.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 &K, Marripati Nagaraja v. Government of Andhra Pradesh, Dhananjay Malik and Ors. v. State of Uttaranchal, Amlan Jyoti Borooah v. State of Assam and K.A. Nagamani v. Indian Airlines.

16. In Vijendra Kumar Verma v. Public Service Commission, 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, 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, para18)





"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 Admn. v. Jasmine Kaur, 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, this Court held that: (SCC P. 500, para 17)

"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 Studies V. S.K. Shiva Subaramanyam."

Heard counsel for the parties and perused the record.

This writ petition filed on behalf of the petitioner deserves to be dismissed for the reasons, firstly, the petitioner has





participated in the selection process after carefully reading the terms and conditions of the advertisement including the number of posts reserved for the PH Category and admittedly no post was reserved for the category to which the petitioner belongs; secondly, the petitioner failed to challenge the terms and conditions of the advertisement prior to participating in the selection process; therefore, in view of the judgment passed by the Hon'ble Supreme Court in the matter of **Ashok Kumar (supra)**; no case is made out for interference by this Court under Article 226 of the Constitution of India.

Hence, this writ petition is dismissed.

(INDERJEET SINGH),J

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