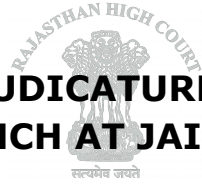




**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**



S.B. Civil Writ Petition No. 1044/2020

Aditya Singh Son Of Shri Gajendra Singh, Aged About 30 Years,
By Caste Rajput, Resident Of A-190, Mahesh Nagar, Jaipur.

-----Petitioner

Versus

1. Rajasthan Public Service Commission, Through Its Secretary, Ajmer, Rajasthan.
2. Department Of Personnel, Government Of Rajasthan, Through Its Principal Secretary, Secretariat, Jaipur.
3. Department Of Women And Child Development, Through Its Secretary, Government Of Rajasthan, Secretariat, Jaipur.

-----Respondents

For Petitioner(s) : Mr. Akhit Gupta

For Respondent(s) : Mr. M.F. Baig

HON'BLE MR. JUSTICE INDERJEET SINGH
Order

14/12/2023

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

“In view of above it is humbly prayed that the Hon’ble Court may by appropriate writ, order or direction:

a) Call for the entire record of the recruitment process in pursuance of the advertisement No-3/examination/Protection officer/EP-I/2017-18, dated 27.03.2018.

b) Issue appropriate writ, order and direction thereby there to the impugned result dated 03.01.2020 may kindly be quashed and set aside and the action of the respondents may kindly be declared arbitrary.

c) Issue an appropriate writ, order and direction to the respondent





RPSC to bring on the record of this Hon'ble Court the roll numbers and marks in each paper of all the candidates who appeared in the general category and secured marks above the criteria of minimum 40% passing marks in each paper.

d) By issuing an appropriate order and directions to the respondent RPSC to bring on record of this Hon'ble Court the marks of the petitioner in each paper.

e) By issuing an appropriate order and direct thereby the Respondent RPSC may kindly be directed to declare fresh/ revised result as per the criteria of minimum 40% passing marks in each paper fixed under scheme of examination in the notification / advertisement dated 27-03-2018 and the case of the petitioner may kindly be considered.

f) Any other appropriate order and direction which this Hon'ble court deems just and fair may also be granted in favour of the petitioner.

g) The cost of petition may also be awarded in favour of petitioner."

In pursuance to the advertisement dated 27.03.2018, the petitioner applied for the post of Protection Officer.

The grievance raised by the counsel for the petitioner in the present writ petition is with regard to scheme of examination as well as not declaring the marks of each papers separately.

Counsel appearing on behalf of the respondent-RPSC submits that the advertisement in question was issued in the year 2018 and the petitioner has filed this writ petition in the year 2020 after participating in the selection process. Counsel further submits that the petitioner is estopped to challenge the scheme of examination as well as the terms and conditions of the advertisement after participation in the selection process.





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 Borooh 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, para17)

“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 by the petitioner deserves to be dismissed; for the reasons, firstly, the petitioner has participated in the examination process after carefully reading the terms and conditions of the advertisement, therefore, he estopped to challenge the scheme of examination as well as terms and conditions of the advertisement, secondly, in view of the judgment passed by the Hon'ble Supreme Court in the matter of **Ashok Kumar & Anr.(supra)**, no case is made out for interference by this Court under Article 226 of the Constitution of India.

Hence, the present writ petition stands dismissed.

(INDERJEET SINGH),J

Upendra Pratap Singh /32

