



AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPS No. 5957 of 2023

Judgment Reserved on 05.03.2025

Judgment Delivered on 08.05.2025

1 - Dulari Patel D/o Fagu Lal Patel Aged About 28 Years Roll No. 25093500, Obtained, Marks 52.604, Overall Rank 37886, R/o Ward No. 12 Village And Post Gadbeda, P.S. And Tehsil Pithoura, District Mahasamund (C.G.) Pin 493551, Mob.- 7440490224

2 - Ramkishor Patel S/o Samru Patel Aged About 28 Years Roll No. 13153587, Obtained Marks 38.542, Overall Rank 72513, R/o Ward No. 4, Dumariha Para, Village And Post Donga Kohroud, Ps And Tahsil Pamgarh, District Janjgir-Champa (C.G.) Pin 495554, Mob.- 7389982490

3 - Shivlochan Rajak S/o Ram Kumar Rajak Aged About 30 Years Roll No. 13213448, Obtained Marks 60.417, Overall Rank 22942, R/o Ward No. 03, Yadav Mohalla, Village And District Bilaspur (C.G.) Pin 495112, Mob.- 7828731457

--- Petitioners

versus

1 - State Of Chhattisgarh Its The Department Of School Education, Through The Principal Secretary, Mantralaya, Mahanadi Bhawan, Atal Nagar, Naya Raipur (C.G.) Pin 492002

2 - Public Education Directorate Chhattisgarh Through Its Director Having Its Office At Public Education Directorate Chhattisgarh, Mantralaya, Mahanadi Bhawan, Atal Nagar, Naya Raipur (C.G.) Pin 492002

3 - Chhattisgarh Professional Board (Vyapam) Through Its Secretary Chhattisgarh Professional Board (Vyapam), Vyapam Bhawan, North Block, Sector- 19, Atal Nagar, Naya Raipur (C.G.) Pin 492002

4 - Principal Secretary General Administration Department, Mantralaya, Mahanadi Bhawan, Atal Nagar, Naya Raipur (C.G.) Pin 492002

--- Respondents

WPS No. 5964 of 2023

1 - Brij Kumar Sao S/o Tikeshwar Sao Aged About 30 Years Caste Obc R/o Village Tongopathra, Post Sukhipali, Thana Pithaura, District Mahasamund (C.G.)

2 - Ashish Pradhan S/o Vishwanath Pradhan Aged About 33 Years Caste Obc, R/o Village Toresingha, Post Toresingha, Tahsil Saraipali, District Mahasamund, Pin Code 493558

3 - Rajesh Kumar S/o Loknath Aged About 29 Years R/o Village Rengakathera, Post Mathaldabri, Tahsil Dongargaon, District - Rajnandgaon, (C.G.) - 491661

4 - Pallavi Sahu W/o Chandraprakash Sahu Aged About 32 Years R/o Village Nariyara, Tahsil Akaltara, District Janjgir (C.G.)

5 - Jyoti Patel D/o Pradeep Patel Aged About 35 Years R/o Near Jindal Pump House, Bodatikra, Post Garhumariya, District - Raigarh, (C.G.) 496001

6 - Shani Ram S/o Jawahar Lal Aged About 33 Years R/o Village Nawagaon, Post Nargoda, Tahsil Sipat, District - Bilaspur, (C.G.) - 495550

7 - Pallavi Sharma D/o Indra Kumar Sharma Aged About 35 Years R/o Near Shri Ram Talkies, Gangpara, Mahasamund, Dist. Mahasamund, (C.G.) 493445

8 - Pramod Kumar Sharma S/o Manoj Kumar Sharma Aged About 26 Years R/o Village Bilaspur, Thana Bilaspur, District Bilaspur (C.G.) 495551

9 - Padminiee Sharma D/o Manoj Kumar Sharma Aged About 24 Years R/o Village Bilaspur, Thana Bilaspur, District Bilaspur, (C.G.) 495551

10 - Ramkishore Patel S/o Samaru Patel Aged About 28 Years R/o Dumariha Para, Donga Kohraud, Janjgir - Champa (C.G.) 495554

11 - Rameshwar Dhiwar S/o Ratirm Aged About 32 Years R/o Village Bhandi, Post Khaira (Dagniya), Thana Seepat, District Bilaspur (C.G.)

12 - Rashmi Sharma S/o Ramashish Sharma Aged About 29 Years R/o Silphili, post Kamari, Block Shankargarh, Dist. Balrampur - Ramanujganj (C.G.)

---**Petitioners**

Versus

1 - State Of Chhattisgarh Through The Secretary, School Education Department, Mahanadi Bhawan, Mantralaya, Atal Nagar, Nawa Raipur (C.G.)

2 - Director Directorate Of Public Instructions, Indrawati Bhawan, Naya Raipur, Atal Nagar, Post Office And Police Station Naya Raipur, Atal Nagar, District - Raipur (C.G.)

--- Respondents

WPS No. 7473 of 2023

1 - Rajesh Kumar S/o Loknath Aged About 29 Years R/o Village Rengakathera, Post Mathaldabri, Tahsil Dongargaon, District Rajnandgaon (C.G.) 491661

2 - Ajay Kumar S/o Firatu Ram Aged About 28 Years R/o C/o Firaturam, Ward No.01, Sahu Mohalla, Choriya, District Janjgir-Champa, C.G. 495671.

3 - Rekha Gupta W/o Satyanarayan Gupta Aged About 36 Years R/o Gram Panchayat Marwahi, Ward No.4, Post And Tahsil Marwahi, District Gourella-Pendra-Marwahi, C.G. 495118.

4 - Abhyuday Sahu S/o Janak Ram Sahu Aged About 35 Years R/o 6157 86, Sahu Chatr Vas Gali, Lalpur, Bagbahara Khurd (Viran) District Mahasamund, C.G. 493449.

5 - Amritlal Patel S/o Satyanarayan Patel Aged About 28 Years R/o House No.85/2, Bajrang Para, Ameri, Raigarh C.G. 496551.

6 - Kunttee D/o Charan Sahu Aged About 35 Years R/o House No.15, Ward No.1 Gauthan Para, Bhilauri, District Bemetara (C.G.) 491332.

7 - Leelagar Das Manikpuri S/o Bihari Das Manikpuri Aged About 33 Years R/o Singhanpuri Kawardha, C.G. 491995.

8 - Pritee Patel D/o Biharilal Aged About 34 Years R/o Ward No.05, Patel Para, Dhanigaon, District Raigarh (C.G.) 496551.

9 - Nandani Sahu W/o Rajneesh Kumar Sahu Aged About 42 Years R/o House No.200, Mahurband Para, Rajbada Parisar, District Kanker C.G. 494334. **---Petitioners**

Versus

1 - State Of Chhattisgarh Through The Secretary, School Education Department, Mahanadi Bhawan, Mantralaya, Atal Nagar, Nawa Raipur (C.G.)

2 - Director Directorate Of Public Instructions, Indrawati Bhawan, Naya Raipur, Atal Nagar, Post Office And Police Station Naya Raipur, Atal Nagar, District : Raipur, Chhattisgarh

... Respondents

(Cause title taken from Case Information System)

For Petitioner(s)	: Mr. R.K. Rungta, Senior Advocate appears along with Mr. Vijay K. Deshmukh & Mr. Vivek Kumar Shrivastava, Advocates
For State	: Mr. Suyashdhar Badgaiya, Dy. G.A. & Mr. S.S. Choubey, P.L.
For Respondent-	Mr. Avinash Singh, Advocate
VYAPAM	

Hon'ble Shri Justice Amitendra Kishore Prasad

CAV Judgment

1. This batch of writ petitions involves identical issues, therefore, in order to decide the same, they are being clubbed together, heard together and are being decided by this common order.
2. As identical and similar issue has been raised in all the petitions, hence, all the cases are being decided while referring ***WPS No. 5957/2023 (Dulari Patel & Ors. vs. State of Chhattisgarh & Ors.)*** as lead case.
3. The petitioners in all the writ petitions are challenging the impugned advertisement bearing No. Est.02/Advt./Dir. Appt./2023/155/Naya Raipur dated 04.05.2023 for filling up the posts of Teachers-E-Cadre Non Gazetted Group C (Pay Matrix level-8), Teacher-T-Cadre Non Gazetted Group C (Pay Matrix level-8) (P/1) and further Advertisement No.Estt.02/Advt./Dir. Appt./2023/155/Naya Raipur dated 04.05.2023 for filling up the posts of Asstt. Teachers E-Cadre Non Gazetted Group C (Pay Matrix level-6), Asstt. Teacher-T-Cadre Non Gazetted Group C (Pay Matrix level-6) as well as impugned notification dated 12.08.2023 for online counseling on the basis of examination results declared by respondent No.3 for selection to the posts in question to the extent that the same do not provide proper reservation to persons with different categories of disabilities in accordance with section 34 of Rights of Persons With

Disabilities Act 2016 and RPWD Rules 2017. It is alleged that the respondents have violated the said legal provisions and their own instructions as contained in the aforementioned office memorandums with regard to implementation of statutory scheme of reservation for persons with benchmark disabilities in as much as the respondents in the impugned advertisements and notification for online counseling have not bifurcated the vacancies to the extent of 2% each in the three categories viz. visually challenged, hearing impaired and loco-motor disabled and Cerebral Palsy and 1% for the fourth category of disability viz multiple challenged and instead has provided for reservation for persons with disabilities as a combined category in utter violation of the said provisions as well as their own instructions and memorandums issued by themselves. The respondent authorities have further not provided 7% reservation in the online counseling for the posts advertised and have also not included the backlog vacancies in compliance of the judgment dated 08.10.2013 passed by the Hon'ble Supreme Court as well as the judgment dated 27.11.2015 passed by this Court. The impugned advertisement was issued for recruitment for the post of Assistant Teachers without following the aforesaid Rules as well as aforesaid judgments. Hence these writ petitions.

4. Though there are some sort of differences in respect of prayer made/reliefs sought by the petitioners in all the petitions, however, in sum and substance, the reliefs are altogether similar and identical. The reliefs prayed in **WPS No. 5957/2023 (Dulari Patel & Ors. vs. State of Chhattisgarh & Ors.)** is taken into consideration which are quoted hereinbelow:-

“10.1 Your Lordships may be please to issue a writ of certiorari or any other writ order or direction thereby calling for the records relating to the issuance of impugned advertisements bearing No. Est. 02/Advt./Dir. Appt./2023/155/Naya Raipur dt. 4.5.2023 for filling up the posts of Teachers-E-Cadre Non Gazetted Group C (Pay Matrix level-8), Teacher-T-Cadre Non Gazetted Group C (Pay Matrix level-8) & Advertisement No.Estt. 02/Advt./Dir. Appt./2023/155/Naya Raipur dt.4.5.2023 for filing up the posts of Asstt. Teachers E-Cadre Non Gazetted Group C (Pay Matrix level-6), Asstt. Teacher-T-Cadre Non Gazetted Group C (Pay Matrix level-6) as well as impugned notification dt. 12.8.2023 for online counseling after the declaration of results for the exams conducted by respondent No.3 for selection to the said posts pursuant to the impugned advertisements, examine the same and quash the said advertisements and notice for online counseling declaring it to be illegal being in contravention of the statutory scheme of reservation, provisions of section 34 of

RPWD Act 2016, Rule 11 of RPWD Rules 2017, the office memorandums issued by respondent s No. 3 dt.27.9.2014, 17.11.2014, 29.8.2018 & 5.3.2019 and the judgment of constitution bench in Indira sawhney's case and judgment dt.8.10/2013 of Hon'ble apex court in C.A. No.9096/2013 and the judgment of Your lordships dt. 27.11.2015 in WPPIL No. 1470/2007.

10.2 Issue a writ of Mandamus of any other writ order or direction thereby directing the respondents particularly respondents No.1 & 2 for issuing fresh advertisements for the posts of teachers (Pay matrix level-8) and Assistant Teachers (Pay Matrix Level-06) providing for proper reservation to the extent of 2% each to visually challenged (VC), hearing impaired(HI) and locomotor disabled and cerebral Palsy(LC) and 1% for the fourth category of disability viz multiple challenged(MC) separately in terms of office memorandums dt.29.8.2018 followed by 5.3.2019 to comply with the provisions of Section 34 of RPWD Act 2016 read with rule 11 of RPWD rules 2017 alongwith backlog of vacancies for each category of disability worked out in terms of the said office memorandums of respondent No.4 without linking it with any community/ category as a separate class of vacancies and take the selection process further on that basis based on the results of the examination already conducted by respondent No.3 or in the alternative undertake fresh

selection process after the issuance of fresh advertisement as prayed for by the petitioners.

10.3 Grant any other relief as your lordship may deem fit.”

5. It was the case of the petitioners that the petitioners are the blind persons and they are having all rights as granted to them under The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (hereinafter referred as 'PWD Act, 1995') as well as The Rights of Persons with Disabilities Act, 2016 (hereinafter referred as 'RPWD Act, 2016'). According to the PWD Act, 1995 as well as RPWD Act, 2016 as also the rules framed thereunder, every Government including respondent State is under obligation to reserve not less than 3% vacancies in every establishment for persons with disabilities out of which 1% each is to be distributed among the persons suffering from blindness, low visions, persons suffering from hearing impairments, locomotor disabled and Cerebral Palsy. The respondent No. 1 through respondents No. 2 & 3 have issued impugned advertisement No.Est./02/Advt./Dir. Appt./2023/155 dated 4.5.2023 notifying the recruitment against 1113 vacancies of Teacher E-Cadre Non Gazetted Group -C (Pay matrix level-08) (P/1) and 4659 vacancies for Teacher T-Cadre Non Gazetted Group -C (pay matrix level-08) (P/2) for Sarguja and Bastar

Divisions. Reservation for persons with disabilities have not been provided separately in addition to the notified reserved and unreserved vacancies for other categories which is in complete violation of Rule 11 of RPWD Rules 2017 besides in complete violation of said office memorandums of the respondents and the judgment dated 8.10.2013 of Hon'ble Supreme Court.

6. Learned counsel for the petitioners submits that the advertisements in question are contrary to the PWD Act, 1995, RPWD Act, 2016 and RPWD Rules, 2017 framed thereunder. There is no reservation in respect of the prescribed disabled persons, as such, the impugned advertisement is not in accordance with law and hence the petitioners are entitled to get selected while giving benefit of respective and they are required to be selected for the post of Assistant Teachers on their disabilities. He submits that impugned advertisement is not equal to 7% as is required by the said office memorandums issued by respondent No.4. It is evident from the fact that out of a total of 1113 vacancies of E-Cadre Teacher for Sarguja and Baster division only 42 vacancies have been notified as reserved for all categories of persons with disabilities together without any disability category wise bifurcation as against a total of 89 vacancies equal to 7% which ought to have been reserved specifically segregating to the extent of 2% each for

persons with suffering from blindness and low vision, persons suffering from hearing impairment, persons suffering from locomotor disability or cerebral palsy and 1% for other categories of disabilities in terms of Section 34 of the RPWD Act 2016. It is stated that similarly out of total of 4659 vacancies of T-Cadre Non-Gazetted Group -C Teachers (Pay matrix level-08) for Sarguja and Baster division, only 270 vacancies have been notified as reserved for all categories of persons with disabilities together without any disability category wise bifurcation against a total of 326 vacancies equal to 7% which ought to have been reserved specifically segregating to the extent of 2% each for persons with suffering from blindness and low vision, persons suffering from hearing impairment, persons suffering from locomotor disability or cerebral palsy and 1 % for other categories of disabilities in terms of Section 34 of the RPWD Act 2016.

7. It is further stated that the respondents also issued another advertisement of Even No. dated 4.5.2023 notifying a total of 793 vacancies for 9 divisions for the post Assistant Teacher-E-Cadre Non Gazetted Group -C post(pay matrix level-06). The said impugned advertisement has also provided reservation to MMSS. NO. 1470/2007 and their own office memorandums with regard to persons with disabilities in complete violation of the provisions of RPWD Act 2016, RPWD Rules 2017,

judgment dated 8.10.2013 of Hon'ble Apex court in C.A. No.9096/2013, judgment of this Hon'ble High court in WPPIL No. 1470/2007 and their own office memorandums with regard to implementation of scheme of reservation. It is also submitted that the petitioners being eligible for the posts notified vide impugned advertisements applied for both the posts of teachers Non Gazetted Group-C (Pay matrix Level-08) and Assistant Teacher Non Gazetted Group -C (Pay matrix level-06) respectively. It is further submitted that That petitioners/applicants appeared in the exam conducted by respondent No.3 for selection to the said posts and the results for the same were declared on 2.7.2023. It is submitted that the results of each category of disabilities were announced linking it with the community to which they belong. All the three applicants/petitioners though have claimed the benefit of reservation against quota for disability irrespective of their community, their results have been linked with OBC category. Overall, the writ petitions deserve to be allowed by setting aside the advertisement or issuing a fresh advertisement.

8. Learned counsel for the petitioner also placed reliance in the matter of **Popat Bahiru Govardhane & Ors. vs. Special Land Acquisition Officer & Anr.** reported in **(2013) 10 SCC 765** and also in the matter of **Union of India & Anr. vs. National Federation of the Blind & Ors.** reported in **(2013) 10 SCC**

772.

9. On the other hand, learned State counsel submits that the petitioner is aggrieved by the advertisement dated 4.05.2023 for filling up the posts of Teachers (E Cadre), Teachers (T Cadre) (Annexure P/1), Assistant Teacher (E Cadre) and Assistant Teacher (T Cadre) (Annexure P/2). The petitioner's main grievance with the selection process is that proper reservation to the disabled candidates has not been provided i.e. 2% to the Visually Challenged (VC), 2% to the Hearing Impaired (HI), 2% to the Loco Motor Disabled and Cerebral Palsy (LC) and 1% to the Multiple Challenged (MC), in total 7% to the disabled category candidates. It is submitted that the Teacher is a divisional cadre post and the grievance with the advertisement for the recruitment of Teachers is that 7% reservation to disabled candidates have not been provided, which is completely misguided because petitioners have not taken into the account a tip which has been printed at the bottom of the table in the advertisement which says that the posts advertised include those posts which had remained vacant of the recruitment of year 2019. To be precise, there were total 3722 posts of teachers of both cadres which had been sanctioned by the Finance Department for the recruitment of year 2023 and 2050 posts of remained vacant post of year 2019 were also included in the year 2023 (including 52

disabled category posts), which adds upto 5772 posts and in the impugned advertisement total post of both the recruitment process has been advertised together i.e. 5772 posts and 7% reservation provided to the disabled category for both divisions for 3772 posts.

10. It is further contended by learned State counsel that the appellants/petitioners are precluded from challenging the reservation policy as they have participated in this recruitment process and they are not entitled to challenge the same. It was argued that time and again, the Hon'ble Supreme Court has held that once the aspirant/candidate has appeared in the examination and has participated, he is precluded and restrained from challenging the advertisement. The petitioners, if, are aggrieved by the advertisement which according to them is not in accordance with the Act of 1995 and act of 2016 as also the RPWD Rules 2017 cannot question the validity of the advertisement in which they have participated. It is further contended that the petitioners have raised another argument that compartment wise reservation can not be provided amongst the disabled category student, however, Rule 28 (5) of the Chhattisgarh Rights of Person with Disability Rules, 2019 clearly prescribes that reservation to the disabled candidates shall be Horizontal as well as Compartmentalized. The petitioner has not challenged the said Rule and has directly

challenged the advertisement. The petitioner should have approached the Hon'ble Division Bench to challenge the virus of the said rule and in absence of that, the petitioner can not challenge the advertisement. Accordingly, the writ petitions lack merits and deserves to be dismissed.

- 11.** Learned counsel for the respondent – VYAPAM submits that the advertisement was issued by the State Government and they are only involved in the examination and selection proceedings which has been entrusted by the State Government so far as the reservation part is concerned, it is upon the State authorities to clarify the same. The respondent-VYAPAM is not the authority to redress the grievances as raised by the petitioners in the writ petitions.
- 12.** I have heard learned counsel for the parties, considered their rival submissions put forth before me and have also gone through the documents appended to the writ petitions.
- 13.** In all the writ petitions, the petitioners are aggrieved with the advertisement issued for appointment of Assistant Teacher 'E' Cadre and Assistant Teacher 'T' cadre. The main contention as raised by the petitioner is that while issuing advertisement, the reservation in respect of disabled candidates have not been provided. According to the petitioners, it is 2% to the visually challenged, 2% to the hearing impaired, 2% to the loco-motor disabled and cerebral palsy and 1% to the multiple challenged

category, i.e. near about 7% seats are required to be reserved for these types of physically disabled persons which has not been done in the said recruitment. The petitioners, if, are aggrieved by the advertisement which according to them is not in accordance with the Act of 1995 and Act of 2016 as also the RPWD Rules 2017, cannot question the validity of the advertisement in which they have participated. It is not in dispute that all the petitioners have participated in the aforesaid recruitment process and they were declared unsuccessful in the said recruitment process. Thereafter, they have challenged this advertisement after participating and after being unsuccessful in the said recruitment process.

14. The law in this respect is well settled that the one who has participated and appeared in the recruitment process cannot challenge the recruitment process as a whole in respect of conditions of advertisement as well as the conditions of recruitment process. The appellants/petitioners are precluded from challenging the reservation policy as they have participated in this recruitment process and they are not entitled to challenge the same.

15. In the matter of **Madan Lal vs. State of J & K** reported in **(1995) 3 SCC 486**, the Hon'ble Supreme Court has pointed out 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.

16. The Hon'ble Supreme Court in the matter of **Chandra Prakash Tiwari vs. Shakuntala Shukla** reported in **(2002) 6 SCC 127**, has clearly 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.

17. Also, the Hon'ble Supreme Court in the matter of **Union of India vs. S. Vinodh Kumar** reported in **(2007) 8 SCC 100** has also held the fact 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.

18. Further, the Hon'ble Supreme Court in the matter of **Amlan Jyoti Borooah vs. State of Assam** reported in **(2009) 3 SCC 227** has well settled that the 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.

19. Furthermore, in the matter of **Manish Kumar Shahi vs. State of Bihar** reported in **(2010)12 SCC 576**, the Hon'ble Supreme Court has held as under:-

“16. We also agree with the High Court that after having taken part in the process of selection know-ing 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 (1995) 3 SCC 486, (1995) 29 ATC 603, Marripati Nagaraja v. Govt. of A.P (2007) 11 SCC 522, Dhananjay Malik v. State of Uttaranchal (2008) 4 SCC 171, Amlan Jyoti Borooah v. State of Assam (2009) 3 SCC 227 and K.A Nagamani v. Indian Airlines (2009) 5 SCC 515:(2009) 2 SCC (L & S) 57].”

20. In a recent judgment passed in the matter of **Mohd. Mustafa vs. Union of India and Others** reported in **(2022) 1 SCC 294**, the Hon'ble Supreme Court has held vide paras 35, 36 & 37 as under:-

“35.It is in this context, we have to examine whether the appellants are estopped from challenging the recommendations made by the Empanelment Committee, given the fact that they had taken a calculated chance, and not protested till the selection panel was made public. In our opinion, the ratio in Madan Lal v. State of J&K, would apply in the present case as when a person takes a chance and participates, thereafter he cannot, because the result is unpalatable, turn around to contend that the process was unfair or the selection committee was not properly constituted. This decision, no doubt, pertains to a case where the petitioner had appeared at an open interview, however, the ratio would apply to the present case as the appellant too had taken a calculated chance in spite of the stakes, that too without protest, and then has belatedly raised the plea of bias and prejudice only when he was not recommended. The judgment in Madan Lal refers to an earlier decision of this Court in Om Prakash Shukla v. Akhilesh Kumar Shukla, wherein the petitioner who had

appeared at an examination without protest was not granted any relief, as he had filed the petition when he could not succeed afterwards in the examination. This principle has been reiterated in Manish Kumar Shahi v. State of Bihar, and Ramesh Chandra Shah v. Anil Joshi.

36. More appropriate for our case would be an earlier decision in *G. Sarana v. University of Lucknow*, wherein a similar question had come up for consideration before a three-Judge Bench of this Court as the petitioner, after having appeared before the selection committee and on his failure to get appointed, had challenged the selection result pleading bias against him by three out of five members of the selection committee. He also challenged constitution of the committee. Rejecting the challenge, this Court had held: (SCC p. 591, para 15)

"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.'

37. The aforesaid judgment in G. Sarana was referred in Madras Institute of Development Studies v. K. Sivasubramaniyan, in which selection to the post of Assistant Professor was challenged on the ground that shortlisting of candidates was contrary to the Faculty Recruitment Rules. The challenge was declined on the ground of estoppel as the respondent, without raising any objection to the alleged variations in the contents of the advertisement and the Rules, had submitted his application and participated in the selection process by appearing before the committee of experts."

21. Reverting to the present cases at hand, upon perusal of the same, it is evident that the writ petitioners participated in the selection process without any demur. They were fully aware of the advertisement and the legal provisions regarding the reservation of seats. However, instead of challenging the advertisement which was issued as far back on 04.05.2023, they chose to participate in the recruitment process. Only upon being declared unsuccessful, did they challenged the entire recruitment process.

22. As such, the petitioners' contention regarding the alleged illegality in providing 7% reservation for persons with disabilities across various categories is not sustainable in law. The petitioners are estopped from alleging that the selection process was not in accordance with the rules. If they believed that the advertisement and selection process were contrary to the rules, they ought to have challenged the same at the outset, without participating in the process. Having failed to do so, they are now precluded and restrained from challenging the advertisement.

23. Another contention raised by the petitioners is that compartment-wise reservation cannot be provided within the category of disabled candidates. However, Rule 28(5) of the Chhattisgarh Rights of Persons with Disabilities Rules, 2019, clearly stipulates that reservation for disabled candidates shall

be horizontal as well as compartmentalized. The petitioners have not challenged the validity of the said Rule and have challenged the advertisement based on the provisions contained therein. If they were aggrieved by Rule 28(5), the proper course would have been to approach the Hon'ble Division Bench to challenge the vires of the Rule. In the absence of such a challenge, the petition against the advertisement is not maintainable.

24. Looking to the aforesaid facts and circumstances of the matter, laws laid by the Hon'ble Supreme Court and particularly the fact that since the entire recruitment process has been concluded and the petitioners have participated in the recruitment process without challenging the reservation as sought by them, therefore, at this stage this Court does not inclined to interfere in the recruitment process conducted by the respondent authorities by invoking extraordinary jurisdiction under Article 226 of the Constitution of India.

25. However, considering the fact that physically disabled persons were not provided adequate opportunity in the said recruitment process, and that the petitioners themselves did not challenge the advertisement prior to participating, the respondent State is directed that in the future, if any vacancies arise, due consideration must be given to the reservation for benchmark disabled persons, in accordance with the applicable

rules. Furthermore, in any future advertisements, the category-wise reservation for benchmark disabled persons shall be clearly specified, in compliance with the law laid down by the Hon'ble Supreme Court in the matter of **In Re: Recruitment of Visually Impaired in Judicial Services**, passed in **Suo Motu Writ Petition (Civil) No. 2 of 2024** and other connected petitions.

26. With the aforesaid direction/observation, the writ petitions stand **disposed of**.

No order as to cost(s).

Sd/-

(Amitendra Kishore Prasad)
Judge

Vishakha