



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION (LODG.) NO. 30532 OF 2022

Rahul Annasaheb Shende
(son of Annasaheb Laxman Shende)
date of birth : 13.01.1990, Age 32 yrs
08 months, working as Engineer
(Contractual Position) in the office of
Registrar, Tata Institute of Social
Sciences, V.N. Purav Marg, Deonar,
Mumbai-400 088 and residing at
Service Staff Quarters (SSQ), Naoroji
Campus, Tata Institute of Social Sciences
Deonar, Mumbai-400 088, State of Maharashtra

....Petitioner

V/s.

1. Tata Institute of Social Sciences
Through Director, V.N. Purav Marg,
Deonar, Mumbai-400 088.
2. Tata Institute of Social Sciences
Through : The Registrar, V.N. Purav Marg,
Deonar, Mumbai-400 088.
3. Deputy Registrar, Tata Institute of
Social Sciences, V.N. Purav Marg, Deonar
Mumbai-400 088.

....Respondents

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Appearances :

Mr. Rahul Walia *a/w. Ms. Asmita Pendharkar, Advocate for the petitioner.*

Mr. Rakesh Singh *a/w. Ms. Heena Shaikh i/by. M.V. Kini, Advocate for the respondents.*

CORAM : **S.V. GANGAPURWALA, ACTING C.J. &
SANDEEP V. MARNE, J.**

Judg. Resd on : **3rd April, 2023.**

Judg. Pron. on : **12th April, 2023.**

JUDGMENT (Per : Sandeep V. Marne, J.)

1. **Rule.** Rule made returnable forthwith. With the consent of the parties, petition is taken up for final hearing.

2. Petitioner is aggrieved by the result of the selection process in which no candidate is found suitable for the post of Assistant Engineer in Tata Institute of Social Sciences. Petitioner claims that interview has erroneously been conducted against the provisions of the Rules in place of a Skill Test and even though he has secured substantially higher marks in the Written Test, he is declared 'not selected' on the ground of award of lesser marks in the interview. This has led to non-filling up of the advertised posts of Assistant Engineer. Petitioner therefore prays for appointment on the post of Assistant Engineer.

3. Brief facts of the case are that, Petitioner is a Civil Engineer having educational qualification of B.Tech. After putting in experience in

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private organization during the years 2011 to 2018, he participated in the selection process initiated by Tata Institute of Social Sciences (TISS) for appointment as Assistant Engineer on contractual basis in the year 2018 and after being declared successful, he came to be appointed as Engineer on contract basis for a period of one year vide order dated 27.07.2018. He was allotted the service staff quarters by TISS. At the end of tenure of one year, his services were extended upto 4.10.2020 vide order dated 1.10.2019. Further extension was granted upto 4.10.2021 by order dated 19.10.2020. His services were again extended upto 4.10.2022 vide order dated 25.10.2021.

4. An advertisement was issued by the respondent-Institute for filling up various posts, including one post of Assistant Engineer on regular basis. In the advertisement, the post of Assistant Engineer was classified as Group-B Level-7 post. Petitioner applied in pursuance of the advertisement. Respondent-institute published syllabus and procedure for filling up the post of Assistant Engineer. The selection was to comprise of written test of 100 marks with weightage of 50%. The Skill Test/Interaction of 50 marks was also scheduled to be conducted with weightage of 50%. The qualifying marks in the Skill Test/Interaction was declared as 25. Petitioner appeared for the written test held on 27.05.2022 and 31.05.2022. He scored 58 marks in objective paper and 73 marks in descriptive paper and claims to have secured first rank in the written test. The Skill Test/Interaction was scheduled to be conducted on 22.6.2022. However, petitioner avers that no Skill Test was conducted and instead an interview was held, in which he was awarded only 22 marks which fell short of 3 marks as compared to qualifying 25 marks. Petitioner has also made certain averments with regard to the manner in which the interview was conducted. It appears

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that, none of the seven candidates could secure passing marks of 25 in the interview. Petitioner scored highest marks even in the interview. However, since he could not cross the barrier of 25 marks, the respondents declared that no candidate was found suitable and decided to go for re-advertisement. Petitioner is aggrieved by this action of the respondents.

5. Appearing for Petitioner, Mr. Walia, the learned counsel would submit that conduct of interview is in violation of the provisions of Cadre Recruitment Rules, 2021 (CCR) under which only Skill Test is required to be conducted of 50 marks with qualifying marks of 25. That under Rule 22(h), no interview could be conducted for appointment to Group 'B' and Group 'C' post. That the post of Assistant Engineer being classified as Group 'B', interview could not have been conducted. He has taken us through the evaluation sheet, which shows that the Skill Test is shown to have been held for only 10 marks, whereas remaining 40 marks were allotted to various attributes such as 'Communication Skill', 'Subject Knowledge' and 'Overall Suitability'. He would then place before us the evaluation sheet in respect of the selection for the post of Deputy Registrar, which is a class 'A' post, for which interview is permissible to demonstrate that the attributes 'Communication skill', 'Subject Knowledge' and 'Overall Suitability' form part of an interview. He would therefore submit that an interview was conducted for adjudging suitability of candidates for appointment on Group 'B' post of Assistant Engineer, which is impermissible. Mr. Walia, would further submit that the process of interview conducted by the committee was a sham. That despite securing highest marks in the written test (36.5), the Interview Committee deliberately awarded lesser marks to petitioner on extraneous consideration of his younger looks. That one of the members

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of the Interview Committee who has signed the evaluation sheet, was not even present when the interview was conducted. That petitioner has been working with the respondent-Institute for last about five years on the same post and that therefore a conclusion could not have been reached of he not possessing necessary skills for the post of Assistant Engineer.

6. Mr. Walia would further submit that interview could otherwise have not been conducted for such a high weightage of 50% marks and in support of his contention, he would rely on the judgment of the Apex Court in the case of **Ashok alias Somanna Gowda and another V/s. State of Karnataka, by its Chief Secretary and Others**, (1992) 1 SCC 28 and **D.G. V/s. Director General, Indian Council for Agricultural Research and Others Versus. D Sundara Raju** (2011) 6 SCC 605.

7. *Per contra*, Mr. Rakesh Singh, the learned counsel appearing for the respondent-Institute would oppose the petition. He would submit that the petitioner, having participated in the selection process, cannot now question the procedure adopted for conduct of selection. That the candidates were made aware about the Skill Test/Interaction being held for 50% marks and that petitioner did not object to the same. That what is conducted is not an interview but merely an interaction. That skills of a candidate to hold a post of Assistant Engineer is determined by conducting an interaction. That the syllabus for conducting the selection was also published in advance and petitioner having taken a calculated chance in the selection process, cannot now turn around and question the process itself. He would pray for dismissal of the petition.

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8. Rival contentions of the parties now fall for our consideration.

9. As per the advertisement, the post of Assistant Engineer is declared as Group 'B' L-7 post. Respondent-institute has formulated Tata Institute of Social Sciences (T.I.S.S.) Cadre Recruitment Rules (CRRs), 2021, Non-Teaching (including Library) Posts, 2021 (**the Rules**). Rule-11 deals with the procedure for issuance of advertisement and inviting applications. Rule-11(III)(e) provides as under :

“Rule.11(III)

(e)

The Institute may conduct written tests at two stages

(I) A qualifying test (Paper I) consisting of the objective-type questions carrying 100 marks, and

(ii) the Descriptive-type test (Paper II) carrying 100 marks.

The minimum qualifying marks to be secured in Paper I shall be 40%. The answer scripts of the candidates for the descriptive test shall be evaluated only in respect of those candidates who secure the minimum qualifying marks in Paper I.

The candidates who secure 50% marks in Paper II shall be called for the skill test, wherever applicable. The marks allocated for the skill test shall be 50 and the minimum qualifying marks in the skill test shall be 25. The merit of the candidates shall be drawn based on the performance in Paper II (Descriptive test) only subject to qualifying the skill test. Notwithstanding the above, the Institute at its discretion may have a single written test and skill test depending upon the number of candidates, job requirements (such as posts under Infrastructure and services, Information and Communication Technology,) Library services etc.”

10. Rule -11(III)(f) deals with the manner in which interview can be conducted. It provides thus :

“(f) The marks allocated for the interview **wherever applicable** shall be 50 and the credit shall be added to the credit scored in Paper-II for the preparation of the merit list.”

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(emphasis ours)

11. Rule - 22 deals with the General Terms and Conditions of Recruitment and sub-rule(h) provides as under :

“Rule-22(h)- In pursuance of the Letter No.19-50/2015-Desk-U dated 22.12.2015, of the MoE (erstwhile MHRD), **there shall be no interview for appointment to the Group ‘C’ and ‘B’ posts** carrying Grade Pay of Rs.4600/- or less. Accordingly, no interview shall be held for appointment to the Group ‘C’ and Group ‘B’ posts.”

(emphasis ours)

Thus, for appointment to Group ‘C’ and Group ‘B’ posts, interviews cannot be conducted under Rule 22(h). As observed above, the post of Assistant Engineer is undoubtedly a Group ‘B’ post. There is no denial to this aspect on the part of the respondent-institute. Thus, for filling up the post of Assistant Engineer, the selection cannot comprise of interview.

12. At the time of calling the candidates for written test, respondent-institute published syllabus and procedure and communicated the same to the candidates. The procedure published by the respondent-institute was as under :

“Procedure for recruitment to ‘B’ & ‘C’ non-teaching posts

GROUP ‘B’ & ‘C’					
Sr. No.	Mode of Assessment		Marks	Minimum Qualifying Marks	Weightage (%)
1	WRITTEN TEST	PAPER I – Objective #	100	40	
		PAPER II –Descriptive	100	50	50.00%
The Candidate to be called for Skill Test subsequent on qualify in Written Exam					

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2	SKILL TEST / INTERACTION	50	25	50.00%

#The answer scripts of the candidates for the descriptive test shall be evaluated only in respect of those candidates who secure the minimum qualifying marks in Paper I.

13. The procedure so published does not use the word 'interview' but provides for conduct of 'Skill Test/Interaction' of 50 marks with minimum qualifying marks of 25. Thus, the candidates were not made aware that an interview would be conducted. On the contrary, a representation was made to the effect that a Skill Test/Interaction would be conducted. One may well argue that the candidates were given some idea about the conduct of interview as the word 'interaction' was also used in the procedure so published. It is on this ground that Mr. Singh has strenuously contended that the selection procedure was made aware to the candidates and that petitioner participated in the same without any demur. That having participated in the selection process and having taken a calculated chance, the petitioner now cannot be permitted to take a *volte-face* and challenge the selection process.

14. We may first deal with the objection on the part of the respondent-institute about participation by petitioner in the selection process and challenging the same after being adjudged unsuccessful. In **Madan Lal v. State of J&K**, (1995) 3 SCC 486, it has been 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

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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.**

(emphasis ours)

15. Thus, the law is well settled that once a candidate participates in the selection process, the same cannot be subsequently challenged by him. However, the Apex Court has carved out an exception to this principle in several judgments. In **Raj Kumar v. Shakti Raj**, (1997) 9 SCC 527 it is held:

16. Yet another circumstance is that the Government had not taken out the posts from the purview of the Board, but after the examinations were conducted under the 1955 Rules and after the results were announced, it exercised the power under the proviso to para 6 of 1970 Notification and the posts were taken out from the purview thereof. Thereafter the Selection Committee was constituted for selection of the candidates. The entire procedure is also obviously illegal. It is true, as contended by Shri Madhava Reddy, that this Court in *Madan Lal v. State of J&K* [(1995) 3 SCC 486 : 1995 SCC (L&S) 712 : (1995) 29 ATC 603] and other decisions referred therein had held that a candidate having taken a chance to appear in an interview and having remained unsuccessful, cannot turn round and challenge either the constitution of the Selection Board or the method of selection as being illegal; he is estopped to question the correctness of the selection. **But in his case, the Government have committed glaring**

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illegalities in the procedure to get the candidates for examination under the 1955 Rules, so also in the method of selection and exercise of the power in taking out from the purview of the Board and also conduct of the selection in accordance with the Rules. Therefore, the principle of estoppel by conduct or acquiescence has no application to the facts in this case. Thus, we consider that the procedure offered under the 1955 Rules adopted by the Government or the Committee as well as the action taken by the Government are not correct in law.

(emphasis supplied)

16. In **Ramesh Kumar Vs. High Court of Delhi and Another** (2010) 3 SC 104, the Apex Court held that minimum marks were prescribed for interview in absence of any statutory requirement and that in such a case, the question of acquiescence would not arise. In para-18, the Apex Court has held as under :

18. These cases are squarely covered by the judgment of this Court in [Hemani Malhotra v. High Court of Delhi](#) AIR 2008 SC 2103, wherein it has been held that it was not permissible for the High Court to change the criteria of selection in the midst of selection process. This Court in All India Judges' case (supra) had accepted Justice Shetty Commission's Report in this respect i.e. that there should be no requirement of securing the minimum marks in interview, thus, this ought to have been given effect to. The Court had issued directions to offer the appointment to candidates who had secured the requisite marks in aggregate in the written examination as well as in interview, ignoring the requirement of securing minimum marks in interview. In pursuance of those directions, the Delhi High Court offered the appointment to such candidates. Selection to the post involved herein has not been completed in any subsequent years to the selection process under challenge. **Therefore, in the instant case, in absence of any statutory requirement of securing minimum marks in interview, the High Court ought to have followed the same principle. In such a fact-situation, the question of acquiescence would not arise."**

(emphasis ours)

17. In the instant case, conduct of interview is against the provisions of Cadre Recruitment Rules, 2021 and therefore mere participation by petitioner in the selection process would not validate the same. Even otherwise, it cannot be held with a degree of certainty that the candidates were made aware in advance about the conduct of

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interview. The procedure published alongwith the syllabus did not prescribe conduct of interview. What is made known to the candidates was that a 'Skill Test/Interaction' would be conducted. It cannot be said that any idea was given to the candidates that an 'interview' would be held. Therefore, even on this ground, it cannot be said that petitioner participated in the selection process with a clear idea that an interview was being held. Therefore, mere participation in the selection by petitioner cannot be held against him nor for the irregularity committed by the respondent-institute in the selection process can be overlooked on the technical ground of the petitioner's participation in the selection.

18. Now we turn to the contention of the respondent-institute that what is conducted is not an 'interview' but merely an 'interaction' to judge the skill possessed by candidates to occupy the post of Assistant Engineer. This contention of the respondent-Institute is successfully demolished by Mr. Walia by placing reliance on the evaluation sheet of the Selection Committee for the post of Deputy Registrar. The post of Deputy Registrar is undoubtedly a Group 'A' post for which holding of interview is permissible. For the post of Deputy Registrar, the candidates were awarded marks for Written Test (35), Communication Skill (20), Subject Knowledge (30) and Overall suitability (50). It is Mr. Walia's contention that, 'communication skill', 'subject knowledge' and 'overall suitability' together form part of interview. When we compare the evaluation sheet for the post of Deputy Registrar with the evaluation sheet involved in the present case, it is clear that the Selection Committee did adjudge the candidates for attributes of 'communication skill', 'subject knowledge' and 'overall suitability'. We reproduce the evaluation sheet in the present case as under :

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EVALUATION SHEET

SKILL TEST/PERSONAL INTERACTION

Sr. No.	Name of the Candidate	Regd. No.	Category	Written Test		Skill Test/Personal Interaction				Total
				73	36.5	Skill Test	Communication Skill	Subject Knowledge	Overall Suitability	
1.	Rahul Annasaheb Shende	C049401	GEN	73	36.5	5	5	7	5	58.5

19. The Skill Test is shown to have been conducted for only 10 marks. Petitioner has secured 5 out of 10 marks in the Skill Test and has thus secured 50% qualifying marks. However, on account of lesser marks given in the attributes of 'communication skill', 'subject knowledge' and 'overall suitability', petitioner could secure only 22 out of 50 marks in the interview, for which the minimum qualifying marks were 25. Otherwise also, in the written test, petitioner secured 73 out of 100 marks which was rounded off to 36.5 (out of 50). The total marks secured in Written Test and Skill Test/Interaction by the petitioner is 58.5, which is more than 50%. However, since he could not surpass the barrier of 25 qualifying marks in Skill Test/Interaction, his name is not recommended for appointment.

20. The evaluation sheet would leave no matter of doubt that the Selection Committee did subject candidates for interview. Conduct of interview for Group 'B' post of Assistant Engineer is specifically prohibited under the Cadre Recruitment Rules, 2021. Even otherwise, prescription of as high as 50% marks for interview is against the law repeatedly laid down by the Apex Court. In **Ashok** (supra), 50 out of 150 marks were allotted to interview which was held as illegal. The Apex Court held as under :

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“ It is not necessary to examine' the matter in detail inasmuch as 50 marks for interview out of 150 are clearly in violation of the judgment of this Court in [Ashok Kumar Yadav & Ors. v. State of Haryana & Ors.](#), [1988] Sup. S.C.R., 657 and Mohinder Sain Garg v. State of Punjab & Ors., J .T. 1990 (4) S.C., 704. On a direction given by this Court on 4th September, 1991 the record of the Selection Committee was produced before this Court at the time of hearing. From a perusal of the marks awarded to the selected candidates it is clear that a large number of candidates have been selected though they had secured much lesser marks than the appellants in the qualifying examination but had secured very high marks in the viva voce out of 50 marks kept for this purpose. Thus it is an admitted position that if the marks for interview were kept even at 15 per cent of the total marks and merit list is prepared accordingly then both the appellants were bound to be selected and a large number of selected candidates would have gone much lower in the merit list than the appellants. In view of the fact that the result of the impugned selections was declared in 1987 and the selected candidates have already joined the posts, we do not consider it just and proper to quash the selections on the above ground. Further the selections were made according to the Rules of 1973 and this practice is being consistently followed for the last 17 years and there is no allegation of any malafides in the matter of the impugned selections. However, the Rules are clearly in violation of the dictum laid down by this Court in the above referred cases and in case the marks for viva voce would have been kept say at 15 per cent of the total marks, the appellants before us were bound to be selected on the basis of marks secured by them in interview, calculated on the basis of converting the same to 15 per cent of the total marks.”

21. In *D. Sundara Raju* (supra) 50% of the marks were allotted to interview. The Apex Court held as under :

“29. In *Ashok Kumar Yadav (1985) 4 SCC 417*, the Court relied on earlier judgment of this Court in *Ajay Hasia and Others v. Khalid Mujib Sehravardi and Others (1981) 1 SCC 722*, wherein the Court took up the view that allocation of as high a percentage as 33.3% of the total marks for the viva voce test was beyond reasonable proportion and rendered the selection of the candidates arbitrary.”

“42. The appellants were totally unjustified in allocating 50% marks for the interview particularly when the

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appellants did not even disclose to the respondent that the interview would also be held to evaluate suitability of the candidate for the said post. The procedure evolved by the Selection Committee for evaluating the respondent was totally arbitrary and contrary to the settled legal position.”

22. In the present case, apart from the fact that conduct of interview is impermissible under the Cadre Recruitment Rules, 2021, allocation of 50% marks for interview is clearly against the spirit of law laid down by the Apex Court. Petitioner has been working on the post of Engineer on contract basis with the respondents for the last about five long years. It is therefore unfathomable as to how the Selection Committee has given him lesser marks in the Skill Test/Interaction by arriving at a conclusion that he is unfit to be appointed on the post. The evaluation sheet shows that he has been awarded only 5 out of 15 marks in Communication Skills. Petitioner has leveled allegations in paragraph-2.14 of the petition about the manner in which the Skill Test/Interaction was conducted, which are denied by Respondents. We do not wish to delve deeper into the said allegations in view of the fact that conduct of interview itself was impermissible under the Rules.

23. The selection committee has awarded 5 out of 10 marks to petitioner in the Skill Test, which is 50%. All other candidates had secured less than 50% in the Skill Test. He has already secured qualifying marks in the Written Test. He has secured highest marks amongst all the seven candidates in the selection. We are therefore of the considered view that petitioner has secured the minimum qualifying marks in the selection. In these circumstances, petitioner ought to have been selected on the advertised post of Assistant Engineer. Even otherwise, the conduct of the respondent-institute and the members of its selection committee in keeping the post vacant by not recommending

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any of the candidates and resorting to re-advertisement does not appeal to us. Petitioner had secured substantially higher marks in the Written Test and had qualified in the Skill Test as well. Despite that, the Selection Committee erroneously conducted interview for the purpose of ousting petitioner from the selection process. This has resulted in wastage of time and energy in conducting the selection process.

24. In the result, the Writ Petition succeeds. Respondents shall treat the petitioner as having qualified in the written and Skill Test/Interaction for the post of Assistant Engineer in pursuance of the advertisement issued in September 2021. The respondents shall accordingly consider his case for appointment on post of Assistant Engineer. Necessary process be completed within a period of 4 weeks from today. Writ Petition is accordingly allowed. Rule is made absolute in the above terms.

(SANDEEP V. MARNE, J.)

(ACTING CHIEF JUSTICE)