

A

D. SAROJAKUMARI

v.

R. HELEN THILAKOM & ORS.

(Civil Appeal Nos. 8345-8346 of 2009)

B

SEPTEMBER 13, 2017

[MADAN B. LOKUR AND DEEPAK GUPTA, JJ.]

Estoppel:

C

Application invited for filling up post of Music Teacher on direct recruitment basis – Respondent No.1 (already a Music Teacher in one of the schools of the Management-respondent No.6) participated in the recruitment process – Appointment of appellant – Thereafter, claim of respondent No.1 to promote her on the basis of seniority – Held: Respondent No.1 is estopped from challenging the recruitment drive, after having participated in that – Service Law.

D

Allowing the appeals, the Court

E

HELD: An advertisement was issued by Respondent No.6, inviting applications for the post of Music Teacher. Respondent No.1 did not raise any objection at that stage that the post could not be filled in by direct recruitment and she should be considered for promotion. Not only that, she in fact, applied for the post and took part in the selection process. After having taken part in the selection process and being found lower in merit to the appellant, she cannot at this stage be permitted to turn around and claim that the post could not be filled in by direct recruitment. [Para 11][516-F-H]

F

G

Dr. G. Sarna v. University of Lucknow & Ors. (1976) 3 SCC 585 : [1977] 1 SCR 64; Madan Lal & Ors. v. State of J & K & Ors. (1995) 3 SCC 486 : [1995] 1 SCR 908; Manish Kumar Shahi v. State of Bihar (2010) 12 SCC 576; Ramesh Chandra Shah and Ors. v. Anil Joshi and Ors. (2013) 11 SCC 309 : [2013] 5 SCR 687; Madras Institute of Development Studies and Anr. v. Dr. K. Sivasubramanian and Ors. (2016) 1 SCC 454 – relied on.

H

Case Law Reference

[1977] 1 SCR 64	relied on	Para 5	A
[1995] 1 SCR 908	relied on	Para 6	
(2010) 12 SCC 576	relied on	Para 7	
[2013] 5 SCR 687	relied on	Para 8	B
(2016) 1 SCC 454	relied on	Para 9	

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 8345-8346 of 2009.

From the final Judgment and Order dated 06.07.2005 passed by the High Court of Kerala at Ernakulam in W.A. Nos.1621 of 2003 and 1735 of 2003 respectively.

Mathai M. Paikaday, Sr. Adv., Shishir Pinaki, Sanjay Jain, Advs. for the Appellant.

E. M. S. Anam, G. Prakash, Jishnu M. L., Ms. Priyanka Prakash, Ms. Beena Prakash, Vijay Shankar V. L., Ranjith K. C. Advs. for the Respondents.

The Judgment of the Court was delivered by

DEEPAK GUPTA, J. 1. Respondent No.6, Management of Church of South India, is running a number of schools in the State of Kerala. We are concerned with two schools, i.e., Samuel LMS High School, Parassala and the Light to the Blind School, Varkala. Respondent No.1 was working as part-time Music Teacher in the Light to the Blind School, Varkala.

2. The Management of the Samuel LMS High School, Parassala, invited applications for filling up the post of Music Teacher on direct recruitment basis. The Appellant and Respondent No.1 both applied for the said post. The appellant was appointed as Music Teacher on 12.07.1999 in Samuel LMS High School, Parassala. Though Respondent No.1 had applied for being considered for appointment as Music Teacher in the Samuel LMS High School, but after she was not selected in the process of direct recruitment, she raised a plea that since the Management of both the schools are same, she was entitled to be promoted as Music Teacher on the basis of her seniority in the Light to the Blind School, Varkala. In this regard, she first filed a petition before the District

A Educational Officer who accepted her petition and held that the case of Respondent No.1 was covered under Rule 43 of Kerala Education Rules (for short KER). The appellant filed an appeal which was rejected by the Deputy Director, Education. Thereafter, a revision petition was filed and the main ground raised by Respondent No.6 herein was that the two
B Schools were separate units. It was contended that the Samuel LMS High School was run for all children, whereas the Light to the Blind School, Varkala, was meant only for differently abled children. It was pointed out that Respondent No.6 had never maintained a common seniority list for these two schools and this was never challenged by Respondent No.1 or any other member of the staff. The Director, Public
C Instruction held that both schools had different identities and Rule 43 was not applicable. Respondent No.1, thereafter, filed a representation which was rejected by the State Government in which it was held that these two schools were separate units and Respondent No.6 had been treating the schools run by them for specially challenged children as separate entities.

D
3. Respondent No.1, thereafter, filed a writ petition in the High Court of Kerala. An objection was raised that since Respondent No.1 herein had taken part in the selection process, she could not, after being not selected, be permitted to turn around and claim that the process of direct recruitment could not have been resorted to by the Management of Samuel LMS High School. This objection was overruled by the High
E Court only on the ground that there can be no estoppel against a statute and the appellant could not be debarred from filing a writ petition. On merits it was held that both the schools formed one unit and, therefore, Respondent No.1 was entitled for promotion in the Samuel LMS High
F School. The two writ appeals filed by the present appellant were dismissed.

G
4. The main ground urged on behalf of the appellant is that Respondent No.1 having taken part in the selection process could not be permitted to challenge the same after she was unsuccessful in getting selected. The law is well settled that once a person takes part in the process of selection and is not found fit for appointment, the said person is estopped from challenging the process of selection.

5. In *Dr. G Sarna vs. University of Lucknow & Ors.*,¹ the petitioner after appearing in the interview for the post of Professor and

H ¹ (1976) 3 SCC 585

having not been selected pleaded that the experts were biased. This Court did not permit the petitioner to raise this issue and held as follows :-

“15. We do not, however, consider it necessary in the present case to get 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.....”

6. In *Madan Lal & Ors. vs. State of J&K & Ors.*², the petitioner laid challenge to the manner and method of conducting viva-voce test after they had appeared in the same and were unsuccessful. This Court held as follows :-

“9.....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 Selection Committee was not properly constituted.....”

7. In *Manish Kumar Shahi vs. State of Bihar*,³, this Court held as follows :-

“23.....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

² (1995) 3 SCC 486

³ (2010) 12 SCC 576

A the selection and the High Court did not commit any error by refusing to entertain the writ petition.”

B 8. In the case of *Ramesh Chandra Shah and others vs. Anil Joshi and others*⁴ the petitioners took part in the process of selection made under the general Rules. Having appeared in the interview and not being successful they challenged the method of recruitment itself. They were not permitted to raise such an objection. This Court held as follows :-

C “24. In view of the propositions laid down in the above noted judgments, it must be held that by having taken part in the process of selection with full knowledge that the recruitment was being made under the General Rules, the respondents had waived their right to question the advertisement or methodology adopted by the Board for making selection and the learned Single Judge and the Division Bench of the High Court committed grave error by entertaining the grievance made by the respondents.”

D 9. Same view has been taken in *Madras Institute of Development Studies and Another vs. Dr. K. Sivasubramaniyan and others*⁵.

E 10. The Kerala High Court did not note the above mentioned judgments and ignored the well settled position of law in rejecting the specific plea raised by the appellant herein that the appellant could not raise the issue that no direct recruitment should have been conducted once she had applied for and taken part in the selection process by direct recruitment.

F 11. As far as the present case is concerned an advertisement was issued by Respondent No.6 inviting applications for the post of Music Teacher in Samuel LMS High School. Respondent No.1 did not raise any objection at that stage that the post could not be filled in by direct recruitment and she should be considered for promotion. Not only that, she in fact, applied for the post and took part in the selection process.

G After having taken part in the selection process and being found lower in merit to the appellant, she cannot at this stage be permitted to turn around and claim that the post could not be filled in by direct recruitment. The reasoning of the learned Single Judge in rejecting the objection is

⁴ (2013) 11 SCC 309

H ⁵ (2016) 1 SCC 454

not in consonance with the law laid down by this Court. In view of this we need not go into the other issues raised. A

12. We, therefore, allow these appeals and set aside order dated 25.07.2003 of the learned Single Judge and dismiss the writ petition O.P.No.36563 of 2002 as being not maintainable.

B

Kalpana K. Tripathy

Appeals allowed.