

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Appeal No. 321 of 2015**

Kartikeshwar Lahre S/o Badri Prasad Lahre, aged about 29 years, earlier posted as In WP Radiographer R/o Pamgarh, Near Tahsil Office PS & Tahsil Pamgarh, District Janjgir Champa (Chhattisgarh)

---- Appellant

Versus

1. State Of Chhattisgarh through its Secretary, Department of Health and Family Welfare, Mantralaya, Mahanadi Bhawan, Naya Raipur, District Raipur, Chhattisgarh.
2. The Director, Medical Education (DME) Raipur, District Raipur, Chhattisgarh.
3. The Dean, Pt. Jawahar Lal Nehru Memorial Medical College, Raipur, Chhattisgarh.
4. Deputy Director, Pt. Jawahar Lal Nehru Memorial Medical College, Raipur, Chhattisgarh.

---- Respondents

For Appellant	:	Shri Mateen Siddique, Advocate.
For Respondents/ State	:	Shri U.N.S. Deo, Government Advocate.

**HON'BLE SHRI NAVIN SINHA, CHIEF JUSTICE &
HON'BLE SHRI P. SAM KOSHY, J.**

Judgment On Board**Per NAVIN SINHA, C.J.****30/6/2015**

1. The present appeal arises from order dated 7.5.2015 passed by the Learned Single Judge dismissing Writ Petition (S) No. 1761 of 2015. The Court declined to interfere with the order dated 14.2.2014 canceling the advertisement dated 1.10.2012, inter alia, for the post of Radiographer passed by Respondent No. 3.

2. Learned Counsel for the Appellant submits that he was a candidate in the Scheduled Caste category. There are no allegations of any illegality in the selection of candidates belonging to his category. Appointment letter had already been issued to the Appellant. He was arbitrarily being denied joining. The advertisement could not have been cancelled after issuance of appointment letter. A right to appointment had accrued to the Appellant

by issuance of the appointment letter and it could not be denied without compliance with the principles of natural justice preceded by a show cause notice and opportunity to defend the appointment. Those who may have been selected illegally should have been identified by separating the grain from the chaff instead of canceling the advertisement itself. Liberty had been granted to the Appellant in Writ Petition (S) No. 654 of 2014, disposed on 17.4.2015, to challenge the order dated 14.2.2014. The Learned Single Judge ought to have called for a counter-affidavit first and then decided the matter. The writ petition ought not to have been dismissed at the threshold without calling for a counter-affidavit. A counter-affidavit may therefore be called for and the appeal be then decided on merits.

3. Conversely, Learned Counsel for the State submits that the order of the Learned Single Judge is well considered and reasoned. The Appellant was a candidate in the common selection process. A committee had been constituted consisting of the Principal/Head of the Department of Skin and Venereal Diseases Department, Assistant Professor, Community Medicine Department and Assistant Grade II, Medical College, Raipur. The Committee, in its report dated 13.1.2014 has by a reasoned report opined that grave illegalities have been committed in the selection process. The entire selection process was held to be vitiated. It was not a case of annulment of an individual appointment letter. There has been no arbitrary cancellation of the advertisement. If the selection process was vitiated no indefeasible right accrued to a candidate even if he had been issued an appointment letter. It is not a case where there have been one or two beneficiaries only who can be identified and whose appointment letters could alone be cancelled. If illegalities are all pervasive in the selection process, the Learned Single Judge committed no error in declining to interfere with the order canceling the advertisement and in light of the same, the Learned Single Judge found no merit in the writ application.

4. We have heard Learned Counsel for the parties and considered the respective submissions.

5. After the selection process was completed, complaints were received. A Committee was constituted of three persons as noticed hereinbefore. The report dated 13.1.2014 of the committee is speaking in nature with regard to the nature of illegalities committed in the selection process regardless of an individual candidate. The Committee requested for all files relating to the selection process. Despite efforts, only thirty records were made available in a selective manner. The Committee examined the complainant Shri O.P.Sharma as also interacted with the members of the Selection Committee constituting the Chairman and other members. The Committee enquiring into the selection process on consideration of the entirety of the matter came to the conclusion that the rules and regulations with regard to the selection process had not been followed. There was no provision for interview and award of marks for the same in the rules and regulations governing the appointments. Nonetheless, the Selection Committee held interviews of the candidates and awarded marks on that basis. The records also revealed that the candidates were first called for interview in the ratio of 1: 15 and then 1:26. No departmental approval was taken before incorporating the process of interview which was also not provided for in the advertisement. The procedure to be followed in a selection process is required to be advertised and made known to the candidates before commencement of the selection process. The marks at the time of interview were divided into minimum qualifications, experience and oral interview. The advertisement provided that the selection would be held in accordance with the prevalent recruitment rules. Nothing has been placed before us by the Appellant that the recruitment rules provided for an interview. Clause 19 of the advertisement provided only for grant of a certain percentage for those holding minimum qualifications and separately for experience in different

kinds of organizations. The applications were to be scrutinized and a merit list prepared category wise on basis of marks awarded under the aforesaid two heads. If a selection process by interview was adopted outside the advertisement and separate marks were to be awarded for assessment of the candidates during a verbal interaction, it naturally gives scope for much manipulation by increasing or decreasing the marks under that head. The Dean had expressed complete ignorance of this procedure. The Committee was of the opinion that this procedure had not been introduced at the establishment level. Moreover, in the marks awarded for oral interview there was serious and several interpolations and over-writings. The Committee had not even given uniform marks to persons holding similar experience for the same duration and marks appeared to have been allotted arbitrarily at whims. The aforesaid grounds, in our opinion, clearly run across the spectrum of the entire selection process and it is difficult to accept the submission on behalf of the Appellant that illegal beneficiaries could be identified. It is not denied that no separate selection process was held for the said category. The reference to two individual beneficiaries Shri Satish Kumar Verma and Shri Ajay Kumar Chandarkar is only illustrative.

6. A person given an appointment letter has a limited right to the extent that joining cannot be denied arbitrarily. If joining is to be denied, it has to be for relevant, cogent and germane reasons and not on extraneous considerations. Even after a person joins in pursuance of an appointment letter, if the selection process is subsequently found to be completely vitiated the appointment can still be annulled. In the facts of the present case, we are of the considered opinion that the respondents have not acted arbitrarily in refusing to accept the joining of the Appellant. If the illegality is all pervasive, and the entire selection process was being cancelled, there was no need for the Appellant to be issued an individual show cause notice.

7. The fact that the Respondents have proceeded cautiously and prudently, is evident from the fact that a Committee of three persons was constituted and which submitted its report. The power of judicial review can only be exercised for examining the decision making process. The Committee examined the complainant and interacted with the members of the Selection Committee. The report of the Committee is speaking in nature fully reflecting application of mind to the grounds on basis of which it was satisfied that the illegalities in the selection process pervaded throughout. The jurisdiction of the Court is not that of an appellate authority over the Committee.

8. There is no invariable rule that in every case a counter-affidavit must be called for and the case be decided only thereafter. If materials as made out in the case do not spell out a cause of action or if the Court on the basis of materials placed before it on behalf of the Petitioner itself comes to the conclusion that no case for interference is made out, the Court is under no compulsion to fulfill the formality of calling for a counter-affidavit and then passing final orders. If there are issues in the grey area, doubts arise in the mind of the Court, matters may be different. In the present case, in view of the enquiry report of the three-men Committee, placed on record by the Appellant himself we are satisfied that the Learned Single Judge committed no error in not calling for counter-affidavit and dismissing the writ petition on basis of the report.

9. We find no merit in the appeal. It is dismissed.

Sd/-
(Navin Sinha)
CHIEF JUSTICE

Sd/-
(P. Sam Koshy)
JUDGE