

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP No.19944 of 2013

Decided on : 12.10.2015

Yogita

... Petitioner

Versus

State of Punjab and others

... Respondents

CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA

Present : Mr. Kapil Kakkar, Advocate
for the petitioner.

Mr. Aman Bahri, Addl., AG, Punjab
for respondents No.1 to 3.

Ms. Parminder Kaur, Advocate for
Mr. Vishal Gupta, Advocate
for respondent No.4.

G.S. Sandhawalia , J. (Oral)

The petitioner seeks the relief of appointment as a Teaching Fellow against a reserved seat for physically handicapped in District Patiala, where 485 posts were advertised on 05.09.2007 and there were 15 seats of physically handicapped quota.

Challenge has also been raised to order dated 16.08.2013 (Annexure P-15), whereby her representation dated 22.12.2012 (Annexure P-12) was rejected on the ground that a decision had been taken on 26.07.2013 to close the process of recruitment of the Teaching Fellows which was initiated in 2007.

It is not disputed that the petitioner has a merit of 54.51 and in the merit list stood at Sr. No.1 and was called for

counselling on 13/20.12.2011. However, in view of the interim order dated 10.06.2011 passed in **CWP No.11071 of 2011** titled as '**Abhishek Rishi Vs. State of Punjab and others**' appointment could not be given, since 5 additional marks to be given to the candidates who had passed from rural area schools was suspended.

The petitioner had approached this Court in **CWP No.4026 of 2013** and this Court on **22.02.2013** while noticing that there were 7 posts lying vacant and that respondent No.4, namely, Neeru Dhingra shall not be adversely affected (who is also respondent No.4 herein), directed the respondents to consider and decide the representation dated 22.12.2012.

As noticed the said representation has been rejected on 16.08.2013 (Annexure P-15), wherein the reasoning given is that 5 additional marks for studying in rural area schools and the 10 marks for each complete year to the persons who have passed ETT and JBT Course, but were unable to secure employment was not granted in terms of judgment passed in '**Abhishek Rishi Vs. State of Punjab and others**' 2013 (3) SCT.

The main factor which prevailed with the respondent was that the decision had been taken on 26.07.2013 to close the process of recruitment which was initiated in the year 2007. It is not a matter of dispute that the seats are still vacant in District

Patiala against the handicapped quota. The respondent while deciding the said issue has not taken into consideration that even if the benefit of 10 marks is to be denied in the absence of any other candidate, the petitioner would still be entitled for appointment. Solely because the respondent had taken a decision to close the selection process after the petitioner had obtained a order on 22.12.2013 in her favour for consideration would not be a valid ground, as such to reject the case of the petitioner. She had been fighting for her legal rights and merely because a decision was taken in principle not to appoint would not be a justifiable ground to deny her consideration, as her legitimate rights accrued when she had appeared on 13/20.12.2011 for counselling but in view of the interim orders passed by this Court, her case could not be considered and finalized. It is settled principle that the action of the Court will harm no one as per the maxim "*actus curiae neminem gravabit*" which has been laid down by the Apex Court in ***South Eastern Coal Fields Limited Vs. State of M.P. 2003(8) SCC 648*** while elaborating on the principle of the maxim "*actus curiae neminem gravabit*" observed that if there is any injury to any person, the same has to be undone. The relevant portion reads as under:-

"That no one shall suffer by an act of the Court is not a rule confined to an erroneous act of the court; the 'act of the court' embraces within its sweep all such acts as to which the court may form an opinion in any legal

proceedings that the Court would not have so acted had it been correctly apprised of the facts and the law. The factor attracting applicability of restitution is not the act of the Court being wrongful or a mistake or error committed by the court; the test is whether on account of an act of the party persuading the Court to pass an order held at the end as not sustainable, has resulted in one party gaining an advantage which it would not have otherwise earned, or the other party has suffered an impoverishment which it would not have suffered but for the order of the Court and the act of such party. The quantum of restitution, depending on the facts and circumstances of a given case, may take into consideration not only what the party excluded would have made but also what the party under obligation has or might reasonably have made. There is nothing wrong in the parties demanding being placed in the same position in which they would have been had the Court not intervened by its interim order when at the end of the proceedings the Court pronounces its judicial verdict which does not match with and countenance its own interim verdict. Whenever called upon to adjudicate, the Court would act in conjunction with what is the real and substantial justice. The injury, if any, caused by the act of the court shall be undone and the gain which the party would have earned unless it was interdicted by the order of the court would be restored to or conferred on the party by suitably commanding the party liable to do so. Any opinion to the contrary would lead to unjust if not disastrous consequences. Litigation may turn into a fruitful industry. Though litigation is not gambling yet there is an element of chance in every litigation. Unscrupulous litigants may feel encouraged to approach the Courts, persuading the court to pass interlocutory orders favourable to them by making out a prima facie case when the issues are yet to be heard and determined on

merits and if the concept of restitution is excluded from application to interim orders, then the litigant would stand to gain by swallowing the benefits yielding out of the interim order even though the battle has been lost at the end. This cannot be countenanced. We are, therefore, of the opinion that the successful party finally held entitled to a relief assessable in terms of money at the end of the litigation, is entitled to be compensated by award of interest at a suitable reasonable rate for the period for which the interim order of the Court withholding the release of money had remained in operation.”

The effect of use of legal maxims as guiding principles has been accepted by the Apex Court in ***Bharat Damodar Kale & another Vs. State of Andhra Pradesh 2003 (8) SCC 559*** and ***Japani Sahoo Vs. Chandra Sekhar Mohanty AIR 2007 SC 2762***, which was further approved by the Constitutional Bench in ***Mrs. Sarah Mathew Vs. The Institute of Cardio Vascular Diseases by its Director 2014 (2) SCC 62***. The relevant observation reads as under:

“14. It is true that in Bharat Kale and Japani Sahoo this Court has referred to two important legal maxims. We may add that in Vanka Radhamanohari, to which our attention has been drawn by the counsel, it is stated that the general rule of limitation is based on Latin maxim ‘vigilantibus et non dormientibus, jura subveniunt’, which means the vigilant and not the sleepy, are assisted by laws. We are, however, unable to accept the submission that reliance placed on legal maxims was improper.

We are mindful of the fact that legal maxims are not mandatory rules but their importance as guiding principles can hardly be underestimated. Herbert Broom in the preface to the First Edition of his classical work "Legal Maxims" (as seen in Broom's Legal Maxims, Tenth Edition, 1939) stated: "In the Legal Science, perhaps more frequently than in any other, reference must be made to the first principles. Indeed, a very limited acquaintance with the earlier Reports will show the importance which was attached to the acknowledged Maxims of the Law, in periods when civilization and refinement had made comparatively little progress. In the ruder ages, without doubt, the great majority of questions respecting the rights, remedies, and liabilities of private individuals were determined by an immediate reference to such maxims, many of which obtained in the Roman law, and are so manifestly founded in reason, public convenience, and necessity, as to find a place in the code of every civilized nation. In more modern times, the increase of commerce, and of national and social intercourse, has occasioned a corresponding increase in the sources of litigation, and has introduced many subtleties and nice distinctions, both in legal reason and in the application of legal principles, which were formerly unknown. This change, however, so far from diminishing the

value of simple fundamental rules, has rendered an accurate acquaintance with them the more necessary, in order that they may be either directly applied, or qualified, or limited, according to the exigencies of the particular case, and the novelty of the circumstances which present themselves. In our opinion, therefore, use of legal maxims as guiding principles in Bharat Kale and Janani Sahoo is perfectly justified.”

In such circumstances, the order dated 16.08.2013 (Annexure P-15) is not sustainable and the same is accordingly quashed. The respondent shall consider the petitioner's case without being bound down that the selection process has been closed and specially keeping in view the above observations on account of the peculiar facts and circumstances of the case and she has been agitating for her legal rights from 2012 onwards and the fact that there are vacancies in the said quota and the petitioner is liable to make the grade on merit in the handicapped quota.

Needful be done within a period of 4 weeks from the receipt of the certified copy of this order.

With the abovesaid observations, the present writ petition is allowed.

OCTOBER 12, 2015
Naveen

(G.S. SANDHAWALIA)
JUDGE