

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

LPA No.924 of 2014(O&M)

Kuldeep Singh and others ... Appellants

versus

State of Haryana and others ... Respondents

LPA No.1060 of 2014(O&M)

Ashish and others ... Appellants

versus

State of Haryana and others ... Respondents

and

LPA No.1208 of 2014(O&M)

Surender Singh and others ... Appellants

versus

State of Haryana and others ... Respondents

Date of Decision: April 21, 2015

**CORAM: HON'BLE MR.JUSTICE SATISH KUMAR MITTAL
HON'BLEMR.JUSTICE HARINDER SINGH SIDHU**

Present: Mr.R.K.Malik, Sr.Advocate assisted by
Mr.Kuldeep Sheoran, Advocate
for the appellants.

Mr.Lokesh Singhal, Additional AG, Haryana.

HARINDER SINGH SIDHU, J.

This judgment shall dispose of three appeals
bearing LPA Nos.924, 1060 and 1208 of 2014 as common

issue for adjudication is involved in these cases. Three different writ petitions were disposed of by Learned Single Judge on 21.4.2014 by passing separate but identical orders.

However, for deciding the controversy, facts are being taken from LPA No.924 of 2014.

This intra Court appeal under Clause X of the Letters Patent has been filed against the order dated 21.04.2014 of the learned Single Judge whereby, the writ petition (CWP No.7203 of 2014) filed by the appellants praying for directions to quash the orders dated 10.10.2013 (Annexure P-2) rejecting their candidature for the posts of Multi-purpose Health Worker (Male) [for short 'MPHW (Male)'] has been dismissed.

The appellants had earlier filed CWP No.24616 of 2013 for the same cause of action. In that case, initially, an interim order was passed directing that appellants be interviewed and the case was listed for 4.2.2014. On 4.2.2014, the writ petition was permitted to be withdrawn on a prayer made by Learned counsel for the appellants that he be permitted to withdraw the petition with liberty to challenge the statutory rules whereby only persons who have passed the Multipurpose Health Workers Training Course recognized/ approved by the State of Haryana were held to be eligible. The said order is reproduced hereinbelow:-

“Counsel for the petitioners prays for withdrawal of the writ petition with liberty to challenge the statutory rules, which restricts eligibility of the candidates for appointment to the post of Multipurpose Health Worker only to such persons who have passed the Multipurpose Health Workers Training Course, which is only recognized/approved by the State of Haryana on the ground that it is violative of University Grants Commission Act, 1956 and All India Council of Technical Education Act, 1987, besides other grounds as well. He further submits that interim orders in favour of the petitioners be maintained till three weeks from today so that they may file appropriate petitions challenging the vires of the statutory rules.

Prayer made by counsel for the petitioners is accepted.

The writ petition is permitted to be withdrawn with liberty to file a fresh petition on the same cause of action, on same/similar and other grounds besides challenging the vires of the statutory rules governing the appointment to the posts of Multipurpose Health Worker (Male). The interim order shall continue to enure in favour of the petitioners as passed in this writ petition for a period of three weeks from today, whereafter it shall cease to operate.”

Thus, vide this order the writ petition was permitted to be withdrawn with liberty to file a fresh petition on the same

cause of action, on same/similar and other grounds besides challenging the vires of the statutory rules.

Thereafter, the petitioners filed CM No.2287 of 2014 praying for recalling the order dated 4.2.2014. When this application came up for hearing on 3.3.2014, the application was withdrawn and the following order was passed:-

“Counsel for the applicant/ petitioners, after arguing for some time, prays for withdrawal of the present application. Application is dismissed as withdrawn.”

Thereafter, the present writ petition i.e. CWP No.7203 of 2014 was filed with the same prayer as had been made in CWP No.24616 of 2013. It was explained in paragraph 19 of the writ petition that there was no necessity to challenge the rules, because the rules do not debar the petitioners for the selection as MPHWS (Male).

The Learned Single Judge dismissed the writ petition by observing that in the opinion of the Court, the writ petition was not maintainable because it was barred by the principle of res-judicata. Taking note of the fact that the challenge to the vires of the statutory rules had already been repelled by a Division Bench of this Court, the learned Single Judge observed that a circuitous method was being adopted by the appellants as a deliberate attempt to over-reach the

Court. It was noticed that initially, an application for recalling the order dated 4.2.2014, which was passed in the presence of the counsel was moved. Factually incorrect averments were made therein. And later the present writ petition on the same cause of action was filed when a challenge to the statutory rules stood repelled. The Ld. Single Judge also held that the present writ petition was barred by the principles of res-judicata. Accordingly, the writ petition was dismissed with the costs of Rs.20,000/-.

Learned counsel for the appellants has contended that as the earlier CWP No.24616 of 2013 had not been disposed of on merit and the appellants had been given liberty to file a fresh one on the same cause of action, on same / similar grounds and other grounds, hence the present petition was maintainable and not barred by the principles of res-judicata. He states that the filing of the application for withdrawal of the order dated 4.2.2014 may have been ill advised, however, that does not affect the legal position that the present petition needs to be adjudicated and disposed of on merit.

Having heard Learned counsel for the parties, we are of the view that the present appeal deserves to be allowed. Learned Single Judge vide his order dated 4.2.2014 had specifically permitted the earlier writ petition to be withdrawn

with liberty to file a fresh one on the same cause of action, on same / similar grounds and other grounds besides challenging the vires of the statutory rules. If the petitioners do not and, in fact, cannot challenge the statutory rules in view of the fact that meanwhile a challenge to the Rules has been repelled by a Division Bench in some other case and they choose to rest their claim on other grounds not involving a challenge to the vires of the Rules, the petitioners cannot be denied such a recourse in view of the liberty already granted vide order dated 4.2.2014. This however does not detract from the position that the filing of the application for recalling the orders dated 4.2.2014 by the appellants was clearly misconceived and the same holds true for the averments made therein.

Accordingly, all the three appeals are allowed. The orders dated 21.4.2014 passed by the Ld. Single Judge are set aside. The matters are remitted to the Learned Single Judge to decide the petitions on merits.

(SATISH KUMAR MITTAL)
JUDGE

(HARINDER SINGH SIDHU)
JUDGE

April 21, 2015
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