

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

Civil Writ Petition No.5151 of 1993

Date of decision: 12.1.2016

Dr.Preet Kamal Bedi and another

... Petitioners

Versus

The State of Punjab and others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr.I.B.Bhandari, Advocate,
for petitioner No.1.

Mr.Harkesh Manuja, Addl., AG., Punjab.

Mr.Sandeep Khunger, Advocate,
for respondent No.3.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RAJIV NARAIN RAINA, J. (Oral)

The challenge in this petition is to the selection of the third respondent as Senior Lecturer [Gynaecology & Obstetrics] in the Department of Medical Education & Research, Punjab. The criteria consisted of 40 marks for the interview, which the petitioner submits, was contrary to the law in **Ashok Kumar Yadav v. State of Haryana** AIR 1987 SC 454 : (1985) 4 SCC 417 wherein the Supreme Court held that the marks assigned for interview should not exceed 12.2% to remove any vestige of discrimination, arbitrariness, unfair evaluation of merit and rule against

excessive discretion left in the hands of the selecting authority. In **Ashok Kumar Yadav's** case the Supreme Court also dealt with, amongst other things, the effect of a relative appearing before the recruiting agency, i.e., Public Service Commission who is related to any of the members of the Commission. When the candidate is related to a member of the Commission but the latter does not participate in the selection, then no inference of favouritism can be drawn: See para. 10 and 16 of the reported judgment.

2. The allegations of relationship in the present petition are contained in para. 10 of the petition furnishing a principal ground of challenge to the selection, which reads as follows : -

“10. That the petitioners have just come to know that Respondent No.4 Dr.V.P.Dubey is dealing with the selection and other matters of Health Department in the Punjab Public Service Commission. Respondent No.3 Dr.Sujata Sharma is a close relative of Respondent No.4 i.e. the sister of Respondent No.4 is married to Mr.Bali presently working as Superintending Engineer in Punjab State Electricity Board at Basant Nagar, office at Amritsar. Dr.Karan Sharma is husband of Respondent No.3. Dr.Karan Sharma and Mr.Bali are cousin brothers i.e. both are sons of real brother and sister. On the asking of Respondent No.3, Respondent No.4 managed to appoint Respondent No.5 as expert. This was done in order to ensure the selection of Respondent No.3 as respondent No.4 was already a relative of respondent No.3 and respondent No.5 was guide, teacher and internal examiner of respondent No.3 and also having close and long association as Respondent No.3 also worked for 3 years under respondent No.5 and therefore the merit of all the other candidates was ignored for selecting respondent No.3. Apparently, the petitioners were possessing much better merit than Respondent No.3. Respondent No.2 may please be directed to produce the entire record of the selection for the perusal of this Hon'ble Court.”

3. Dr.V.P.Dubey respondent No.4 was arrayed as a party by name. He was at the time a Member of the PPSC, Patiala. He has filed an affidavit explaining the allegations of relationship with the selected candidate in para. 10. His reply is found at page 101 of the paper-book which reads as follows : -

“So far as the relationship of answering respondent with Respondent No.3 is concerned, in this respect it is submitted that the selected candidate (Respondent No.3) is not related to the answering respondent and hence denied.

It is reiterated that Respondent No.3 (selected candidate) is not related to the Answering Respondent. The Relationship in the family is linked to “Blood” and “Marriage”. The respondent is not related to his “father's family”, or to his “mother's family” or through marriage. The Answering Respondent do not know the details of the families in which the sons/daughters of the Uncles of my brothers in law (numbering about 12) including Sh.K.K.Bali are married and what their spouses are doing.”

4. He has denied relationship by blood. In these circumstances, it cannot be said that Dr.V.P.Dubey and respondent No.3-Dr.Sujata Sharma are related to each other by blood. It is not the assertion of the petitioner, upon whom the burden of proof that favouritism had played a part in the selection of the third respondent, that Dr.V.P.Dubey sat in the Committee which interviewed Dr.Sujata Sharma.

5. Since there is no specific assertion in the petition, there is no specific denial by the respondents on the point but an adverse inference cannot be drawn against the State since the original burden of proof was on the petitioner to discharge in order to establish an allegation of bias and malafides. However, the petitioner would not succeed on the strength of her bald assertion in the writ petition nor can she depend on any laxity in the

response of the State, Commission or the private respondent. In any case, twenty years have gone by from the date of the selection and appointment on 15.4.1993. Moreover, petitioner No.1 has retired from service on 30.9.2014. Petitioner No.2 is not represented by Mr.Bhandari appearing for petitioner No 1 and the contesting petitioner remains petitioner No.1.

6. It appears far too late in the day to consider setting aside of the selection of the third respondent when no relief could be granted to the petitioner even if the appointment was quashed. Moreover, there is hardly any legal ground to do so.

7. On the question of excessive marks for the interview, this Court can only say that the petitioner knew the criteria adopted by the Commission beforehand and participated in the selection process without demur and took her chances and, therefore, cannot thereafter turn around and assail the selection on that account. I, therefore, find no cogent reasons to upturn the selection of respondent No.3 after 22 years merely on the ground of suspicion arising out of a relationship which even if taken true is remote.

8. It is also not enough to set aside a selection merely because the third respondent worked under the guidance of the 5th respondent called as a subject expert by the Commission for the interviews.

9. It is well settled that allegations of favouritism, nepotism and the kind are in the nature of malafides easy to allege but difficult to prove by the person aggrieved and in case, the person imputing fails to prove them or fails to meet the standards required on affidavit in establishing malafides to the hilt in writ jurisdiction, then it is not open to the party to lead

evidence on disputed questions of fact before the writ Court in order to secure relief. For that, she would have to take recourse to remedy provided before the civil court which is of superior quality when claim is based upon evidence and proof. I would, therefore, not find any merit in either of the two grounds pressed and would dismiss the petition.

(RAJIV NARAIN RAINA)
JUDGE

January 12, 2016
Paritosh Kumar