

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

LPA-1168-2015 (O&M)

Decided on : 27.02.2016

Apurv and others

.... Appellants

VERSUS

State of Haryana and others

..... Respondents

CORAM: **HON'BLE MR. JUSTICE RAJIVE BHALLA**
HON'BLE MR. JUSTICE SHEKHER DHAWAN

Present: **Mr.Gurminder Singh, Senior Advocate, with
Mr.R.P.S.Bara, Advocate, for the appellants
(in LPA-1168-2015).**

**Mr.Inder Pal Goyal, Advocate, for the appellant(s)
(in LPA-1198-2015 and LPA-1291-2015).**

**Mr.P.K.Chugh, Advocate, for the appellant(s)
(in LPA-1266-2015).**

Mr.D.S.Nalwa, Addl.A.G., Haryana.

Mr.H.N.Mehtani, Advocate, for HPSC.

**Mr.Kanwal Goyal, Advocate, for HPSC
(in LPA-1291-2015).**

RAJIVE BHALLA, J. (ORAL)

By way of this order, we shall dispose of LPA-1168-2015, LPA-1198-2015, LPA-1266-2015 and LPA-1291-2015. For the sake of convenience, facts are being taken from LPA-1168-2015.

The appellants challenge order dated 29.05.2015, dismissing their writ petitions.

The appellants sat for an examination conducted by the Haryana Public Service Commission for HCS Executive and Allied

Branch, and were declared successful but as a cloud was cast on the examination, the matter was investigated by the State Vigilance Bureau. A Special Leave Petition was filed by the appellants and certain other candidates, seeking appointment, which was decided by directing the vigilance bureau and the State of Haryana to take an independent decision in the matter so as to ascertain the fairness of the selection. The writ petitions filed by the appellants were eventually dismissed by holding that as it is not possible to distinguish between tainted and non-tainted candidates. The entire process of selection was, therefore, held to be a nullity. The appellants thereafter filed appeals wherein after considering the entire matter, the following order was passed on 12.08.2015: -

“We have heard counsel for the appellants and perused the impugned order. A perusal of the findings recorded by the learned Single Judge, appear to prima-facie suggest that irregularities/illegalities detected by the Vigilance Bureau, vitiate the entire selection process and, therefore, do not entitle the petitioners to urge that as nothing is alleged against them, they should be offered appointment. A perusal of the order passed by the Supreme Court in a Special Leave Petition, pertaining to this very selection reveals that the State of Haryana was required to take an independent decision either by holding an inquiry or based upon the report received from the Vigilance Bureau.

A perusal of the record as well as the impugned order reveals that there is no reference to any independent decision taken by the State of Haryana. Thus before proceeding any further in the matter, we call upon the State of Haryana to apprise the Court whether any decision was taken by the authority concerned based upon the inquiry submitted by the Vigilance Bureau or any other material that the entire selection stands vitiated.”

We need not refer to the other interim orders at this stage as the State of Haryana admitted that after receipt of the vigilance report (which does not allege any wrong doing on the part of the

appellants and other non-tainted candidates) it had not taken any independent decision. The State of Haryana after examining the record, constituted a committee of senior officers to taken a decision in the matter. The committee apparently with the object of ensuring that there is no factual or legal error, requested that the matter be once again examined by the vigilance bureau. The Chief Secretary to Government of Haryana, therefore, made a reference to the vigilance bureau, which reads as follows: -

“Reference to your office memo No. 61362, dated 9th December, 2015 on the subject mentioned above. The matter has been considered by the Government and it has been observed that it needs to be decided who is tainted and who is untainted in the HCS (Ex. Br.) and other Allied Service Examination, 2004. This can be best done by the State Vigilance Bureau which has thoroughly investigated all relevant records. Thus the Government has directed the DG/SVB to do the needful and if, deemed necessary, may set up a Committee under his Chairmanship for the purpose. The Director General, State Vigilance Bureau has further been requested to submit report in this matter within one month positively vide this office letter No. 66/13/2012-2SIII dated 17.12.2015 (copy enclosed).”

The State of Haryana, having taken a decision to consider separation of tainted and untainted candidates, is granted one month time from today, to take a final decision in the matter.”

The vigilance bureau thereafter submitted a fresh report to the government. The committee after examining the entire record including the recommendations made by the vigilance bureau, took a conscious decision and segregated the tainted from the non-tainted candidates and forwarded its report to the Government.

Counsel for the State of Haryana submits that the State has accepted the report and passed an order dated 26.02.2016 and for that purpose refers to a letter received from the Chief Secretary to

Government of Haryana addressed to the Advocate General, Haryana, which reads as follows: -

“Kindly refer to the order dated 12.08.2015 passed by Hon'ble High Court in the said case vide which the Hon'ble High Court was pleased to call upon the respondent State of Haryana to apprise the Court whether any decision was taken by the authority concerned based upon the inquiry submitted by the State Vigilance Bureau or any other material that the entire selection stands vitiated.

In this regard it is submitted that the matter has been got examined by the Government. Keeping in view the inquiry report submitted by the State Vigilance Bureau after the consideration of matter 'in-principle' decision has been taken to offer appointment to the candidates who found innocent in this report. It is also submitted that since the vacancies for the year 2004 have already been withdrawn as such they cannot be given appointment against these vacancies. These candidates can be considered against the present vacancies as fresh candidates. It is also made clear that those accepting the offer of appointment would not be entitled to backwages or any other benefits, what so ever. The decision of the competent authority of offering appointment is also subject to the revised recommendation of Haryana Public Service Commission for the HCS (Ex. Br.) & Other Allied Services Examination-2004. It is therefore, requested to apprise the Hon'ble High Court accordingly.”

The letter is taken on record.

Counsel for the State of Haryana states that he has instructions to make a positive statement that in view of the decision taken by the Government of Haryana, duly reflected in letter dated 26.02.2016, candidates who have been found innocent in the report shall be offered appointment in terms of the decision taken by the government but the impugned order may only be set aside as regards the non-tainted candidates.

Counsel for the appellants state that they have no objection if the appeals are disposed of in terms of the decision taken by the State of Haryana.

In view of what has been recorded hereinabove,

particularly the order passed by the State of Haryana and the statement made by counsel for the State of Haryana, the appeals are partly allowed in terms of decision taken by the State of Haryana vide letter dated 26.02.2016 and the impugned order is set aside insofar as it concern the candidates who have been found to be innocent. The consequential orders be processed and passed expeditiously.

[RAJIVE BHALLA]
JUDGE

27.02.2016
shamsher

[SHEKHER DHAWAN]
JUDGE