

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

[1] Letters Patent Appeal No.697 of 2014 (O&M)
Date of Decision: April 26, 2016

Rohit Kapoor and others

.....Appellants

versus

Haryana Staff Selection Commission, Panchkula and others

.....Respondents

[2] Letters Patent Appeal No.826 of 2014 (O&M)

Avinash Singla and others

.....Appellants

versus

Haryana Staff Selection Commission, Panchkula and others

.....Respondents

CORAM: HON'BLE MR.JUSTICE SURYA KANT.
HON'BLE MR.JUSTICE A.B.CHAUDHARI.

Present: Mr.Girish Agnihotri, Senior Advocate with
Mr.Saroj Malakar, Advocate,
Mr.R.K.Malik, Senior Advocate with
Mr.Ramandeep Singh, Advocate, for the appellants.
Mr.Vishal Garg, Additional AG, Haryana.
Mr.Harsh Garg, Advocate, for respondents Nos.3 to 5.

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1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Surya Kant, J. (Oral)

This order shall dispose of LPA Nos.697 and 826 of 2014 as both these appeal are directed against a common order passed by learned Single Judge.

For brevity, the facts are being extracted from LPA No.697 of 2014.

[2] This letters patent appeal is directed against the order dated 11.03.2014 passed by learned Single Judge whereby selection and appointment of the appellants on the post of Sanitary Inspectors under various Municipal Committees in Haryana, has been set-aside. The above-stated order has been passed at the instance of un-selected/wait-listed candidates.

[3] The facts may be noticed briefly. The appellants and private-respondents applied for the posts of Sanitary Inspectors advertised by Haryana Staff Selection Commission in the year 2009 (P-1). Besides the prescription of minimum qualifications, the advertisement stipulated that the Commission may short-list the candidates for interview by holding a written examination or on the basis of any rationale criteria to be adopted by it.

[4] It is an admitted fact that no written-examination was held. The Commission is said to have selected the candidates on the basis of their academic qualifications, experience and performance in viva-voce. The final selection result came to be challenged and the learned Single Judge has set-aside the selection observing as follows:-

“... On perusal of original record of the selection, it is clear that more marks have been awarded to the selected candidates. All of them have been awarded marks between the range of 17 to 20, whereas, the petitioners have been awarded lowest marks so that they may not reach the stage of selection. Such a criteria of awarding marks raises suspicion and a question mark towards the attitude of the Members of the Selection Committee. More marks have been given to the selected candidates and lowest

marks have been given to the petitioners and other candidates with a purpose so that they may not reach to the stage of selection. The criteria of selection has been prepared with a pre-determined purpose to select certain candidates by awarding marks in a particular range of selection and to give marks to other candidates so that they may not reach to that range of selection. By considering the wisdom of Selection Committee that in case, the selected candidates did well in interview and marks were awarded as per their performance, the marks of interview are not being disturbed as the Court cannot close its eyes by seeing the record of selection and attitude of the Selection Committee.....”

(emphasis applied)

[5] Learned Single Judge has further directed that while 25 marks may be kept for *viva voce*, the remaining 75 marks be considered for eligibility qualifications by applying uniformly to all short-listed candidates and that the Commission shall reframe the criteria within 75 marks.

[6] It may be seen that the selection has been set-aside on the basis of suspicion, the foundation whereof lies in the allocation of higher marks for interview to the “selected candidates” as compared the lower marks given to “non-selected candidates”.

[7] On a query by us, it is fairly stated by learned counsel for the writ-petitioners/respondents that there are no allegations of either any favourable bias in selecting the candidates or to prejudice against the non-selected candidates. The members of the Commission who interviewed the candidates were not made party-respondents.

[8] The learned Single Judge may not be right in assuming that as if 75 marks are sought for competitive examination. The instant case is not a selection on the basis of

written examination followed by *viva-voce*. It is a selection purely on the basis of interview. While the Commission is obligated to lay-down a fair, transparent and merit-oriented criteria, the Courts may not have the expertise to command the Commission to lay down the criteria on case to case basis. Such an exercise has to be left to the wisdom of the Commission, save it satisfies the test of Articles 14 & 16 of the Constitution.

[9] It is submitted that since the learned Single Judge did not consider the contention, namely, that the criteria does not satisfy the test of Articles 14 & 16 of the Constitution or that it could be mis-used to select or reject a candidate arbitrarily, the matter may be remitted to the learned Single Judge for re-consideration.

[10] We find some merit in the contention, for the learned Single Judge has not minutely considered the justification or validity of the selection criteria.

[11] In view of the above discussion, the order passed by the learned Single Judge is not sustainable as the matter requires reconsideration. Consequently, the writ petitions are allowed in part; the order dated 11.03.2014 passed by the learned Single Judge is set-aside and the matter is remitted to the learned Single Judge for afresh adjudication in accordance with law.

We request the learned Single Judge to make an endeavour to decide the same within a period of four months.

The parties are directed to appear before the learned Single Judge on 23.05.2016.

Dasti.

[SURYA KANT]
JUDGE

April 26, 2016
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[A.B.CHAUDHARI]
JUDGE