

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA
AT CHANDIGARH

LPA No.856 of 2014 (O&M)

Shaganpreet Singh and others

... **Appellants**

v.

Sukhpreet Singh and others

... **Respondents**

2.

LPA No.948 of 2014 (O&M)

Punjab School Education Board, Mohali

... **Appellants**

v.

Sukhpreet Kaur and others

... **Respondents**

3.

LPA No.1379 of 2014 (O&M)

Punjab School Education Board, Mohali

... **Appellants**

v.

Sohan Singh and others

... **Respondents**

4.

LPA No.1380 of 2014 (O&M)

Punjab School Education Board, Mohali

... **Appellants**

v.

Amandeep Kaur and others

... **Respondents**

5.

LPA No.1381 of 2014 (O&M)

Punjab School Education Board, Mohali

... **Appellants**

v.

Iqbal Singh and others

... Respondents

6.

LPA No.442 of 2015 (O&M)

Punjab School Education Board, Mohali

... Appellants

v.

Sukhpreet Singh and others

... Respondents

7.

LPA No.443 of 2015 (O&M)

Punjab School Education Board, Mohali

... Appellants

v.

Ramandeep Singh and others

... Respondents

8.

LPA No.450 of 2015 (O&M)

Punjab School Education Board, Mohali

... Appellants

v.

Dalbir Singh and others

... Respondents

9.

LPA No.453 of 2015 (O&M)

Punjab School Education Board, Mohali

... Appellants

v.

Manjit Singh and others

... Respondents

10.

LPA No.562 of 2015 (O&M)

Punjab School Education Board, Mohali

... Appellants

v.

Thomas and others

... **Respondents**

11. LPA No.563 of 2015 (O&M)

Punjab School Education Board, Mohali

... **Appellants**

v.

Tarlochan Singh and others

... **Respondents**

12. LPA No.564 of 2015 (O&M)

Punjab School Education Board, Mohali

... **Appellants**

v.

Gurwinder Singh and others

... **Respondents**

13. LPA No.804 of 2015 (O&M)

Punjab School Education Board, Mohali

... **Appellants**

v.

Ashwani Kath and others

... **Respondents**

Date of decision: July 20, 2016.

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

Present: Mr. Girish Agnihotri, Senior Advocate with
Mr. Saurabh Gulia, Advocate
for the appellants (in LPA No.856 of 2014).
Mr. J.S. Puri, Advocate for the appellant
(in LPA No.948 of 2014).
Mr. Surinder Garg, Advocate for respondent No.1
(in LPA No.1381 of 2014).
Mr. D.S. Brar, Advocate for respondents
No.1 and 3 (LPA No.1380 of 2014).
Mr. Parvesh K. Saini, Advocate for respondents

No.1, 2, 4, 6 & 7 and 20 to 28 (in LPA No.856 of 2014) and for private respondents in LPA No.453 of 2015).

Mr. J.S. Brar, Advocate for respondents No.1 to 4 and 6 (in LPA No.948 of 2014).

Mr. Mohit Jaggi, Advocate for respondent No.1 (in LPA No.563 of 2015).

Mr. Ashish Bansal, Advocate for PSEB (in LPA Nos.442, 443, 450, 453, 562, 563, 564 and 804 of 2015).

Mr. Harinder Singh, Advocate for respondent No.1 (in LPA No.564 of 2014) and for respondents No.1 and 2 (in LPA No.562 of 2014).

Ms. Harmanpreet Kaur (Simmi), Advocate for respondents No.1 to 4 (in LPA No.804 of 2015).

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

Per Court

By the present order, we shall dispose of LPA Nos.856, 948, 1379, 1380 and 1381 of 2014 and LPA Nos.442, 443, 450, 453, 562, 563, 564 and 804 of 2015 as common questions of law and facts are involved. Facts have been taken from LPA No.856 of 2014.

[2]. These appeals have been filed by the Punjab School Education Board and selected-appointed candidates to the post of Laboratory Attendant against the judgment and order dated 20.2.2014 passed by the learned Single Judge of this Court in CWP No.8923 of 2012 and others.

FACTS:

[3] The Punjab School Education Board (in short the Board) had issued a public advertisement on 27.4.2011 for selection to 31 posts of Laboratory Attendants. The last date for submission of the applications was 9.5.2011. A total of 4752 candidates applied for those posts. Written test for short-listing the candidates was conducted on 28.9.2011 in which 4594

candidates had appeared. The total marks in the written test were 60 and bench-mark of 33% i.e. 20 marks out of 60 marks was prescribed for short-listing the candidates as a result of which 1952 candidates were short-listed. They were interviewed on different dates and finally the selection was made. The selection was put to challenge in the bunch of writ petitions before the learned Single Judge on various grounds.

[4]. The learned Single Judge had decided those writ petitions on 31.10.2012. However, in Letters Patent Appeal No.1864 of 2012, some of the selected candidates had made a grievance that they were not heard in those writ petitions and as such by order dated 25.9.2013, the appellate court remitted all the matters to the learned Single Judge for fresh consideration. Thereafter, the petitions were again heard and have been allowed by the common impugned judgment and order with a further direction to hold the interviews afresh after short-listing the candidates as per the given directions.

ARGUMENTS:

[5]. In support of the appeals, learned Counsel for the appellants made the following submissions:-

[5.1]. The writ petitions at the behest of the candidates who were not selected ought to have been dismissed since they participated in the selection process till the completion of process. The non-selected candidates were not entitled to turn around and challenge the selection criteria which was uniformly applied. Reliance has been placed on the decision: Om Parkash Shukla v/s Akhilesh Kumar Shukla, AIR 1986 SC

1043.

[5.2]. The learned Single Judge has incorrectly placed reliance on the decision in State of Punjab and others v/s Manjit Singh and others, 2003(3) SCC 559 and State of Bihar v/s Upender Narain Singh and others, so also Duddilla Srinivasa Sharma and otehrs v/s V. Chrysolite, 2013(4) SCALE 92 as these were clearly distinguishable on facts and the ratio of those decisions have not been correctly applied by the learned Single Judge.

[5.3]. Admittedly, no rules for selection of Laboratory Attendants were framed and therefore the authorities carried out the selection process in accordance with the reasonable, fair and well known procedure for selection which could not have been faltered. The holding of written test in order to short list the candidates cannot be said to be illegal so also fixing of particular number of marks for the interview.

[5.4]. It was further contended that the learned Single Judge ignored the fact that the post of Laboratory Attendant is like the post of Peon with an addition to have knowledge about the names of scientific materials required and for carrying them during the course of practicals. But then for selecting the Laboratory Attendants, comparison with the posts of Medical Officers or Class I officers relying on the Supreme Court decisions by the learned Single Judge was out of place. The conduct of written test for selection, looking to the nature of duties of the Laboratory Attendants which are like a Peon serves no purpose and on the contrary the knowledge of scientific instruments, chemicals etc. required during practicals in the schools, could be better tested in interview rather than written examination.

[5.5]. Learned counsel for the appellants also contended that the learned Single Judge committed an error in declaring that 5 marks allotted

for the candidates coming from rural areas was illegal for which reliance has been placed on the Division Bench Judgment of this Court in the case of Sudesh Rani v/s State of Punjab, 2010(5) SLR 768.

[5.6]. Learned counsel for the appellants then contended that the learned Single Judge has not recorded any finding about the mala fides on facts or in the law on the part of the selection authorities in the absence of which it was not possible to draw any adverse inference about the process of selection or the selectors, as was held in the case of Ashok Kumar Yadav v/s State of Haryana, 1985 Suppl (1) SCR 657.

[5.7]. Learned Counsel for the appellants in these appeals distinguished the judgments relied upon by the learned Single Judge and finally prayed for allowing the appeals.

[6]. Per contra, learned Counsel for the respondents-non selected candidates, i.e., the petitioners before the learned Single Judge supported the reasons and the impugned judgment and the order and submitted that the appeals are without any merit and should be dismissed as such. The Counsel for the respondents contended that the decision in the case of Sudesh Rani (supra) was over-ruled by the Full Bench of this Court. He then submitted that the principle of estoppel would not apply against the present respondents when the illegalities in the selections were blatant and petitioners could not be estopped to raise challenge to the selection merely because they had participated in the selection process without any knowledge of the selection or the criteria. Learned Single Judge rightly applied the decision of the Apex Court to determine as to how the candidates are to be called for interview namely, not more than five times.

Counsel for the respondents therefore prayed for dismissal of the appeals.

CONSIDERATION:

[7]. We have heard learned counsel for the rival parties at length. We have carefully seen the entire records, so also the reasons recorded by the learned Single Judge.

[8]. It is not in dispute that there were only 31 posts of Laboratory Attendants which were advertised by public advertisement. The number of applicants who had applied went upto 4752 for only 31 posts. Looking to the large number of applications, written test for short-listing was conducted in which 1952 candidates were short-listed. It is not in dispute that there are no rules for the process of selection for the post of Laboratory Attendants. The duties of Laboratory Attendants are almost like a Peon, in addition with requisite knowledge about the names of the scientific instruments, chemicals and the caution to be taken while carrying them during practicals held in schools. The post of Laboratory Attendant thus is the lowest in the rung like a Peon. As stated earlier, as against availability of 31 posts, large number of candidates i.e., 4752 had applied and therefore, the selection authority decided to have a written test for short listing as it was physically impossible to consider 4594 candidates for 31 posts. The process of short listing is well recognized by the Courts. Even after short listing, it was found that there were 1952 candidates.

[8.1] The first question that falls for consideration is whether candidates to the extent of 3 to 5 times of the number of posts to be filled only should have been called for interview and not more than 63 times after short listing as in the case in hand. In our opinion, it would be significant to

keep in mind the nature of posts for which the selection was being made.

As stated by us, the posts of Laboratory Attendant is of the lowest rung. In the case of Liladhar v/s State of Rajasthan, AIR 1981 SC 1777, the Apex Court has to say thus in para 9 of the said judgment:-

“As already observed by us the weight to be given to the interview test should depend on the requirement of the service to which recruitment is made, the source material available for recruitment, the composition of the interview Board and several like factors.

Ordinarily recruitment to public services is regulated by rules made under the proviso to Art. 309 of the Constitution and we would be usurping a function which is not ours, if we try to redetermine the appropriate method of selection and the relative weight to be attached to the various tests. If we do that we would be rewriting the rules but we guard ourselves against being understood as saying that we would not interfere even in cases of proven or obvious oblique motive. There is none in the present case. The Writ Petition is therefore dismissed but in the circumstances there will be no order regarding costs.” (emphasis applied)

[9]. In the case of Ashok Kumar Yadav (supra), the Apex Court stated thus in para 22:-

“It is now admitted on all hands that while a written examination assesses the candidate's knowledge and intellectual ability, a viva voce test seeks to assess a candidate's overall intellectual and personal qualities. While a written examination has certain distinct advantages over the viva voce test, there are yet no written tests which can evaluate a candidate's initiative, alertness, resourcefulness, dependableness, cooperativeness, capacity for clear and logical presentation, effectiveness in discussion, effectiveness in meeting and dealing with others, adaptability, judgment, ability to

make decision, ability to lead, intellectual and moral integrity. Some of these qualities can be evaluated, perhaps with some degree of error, by a viva voce test, much depending on the constitution of the interview Board.”

[10]. The decision in the case of Ashok Kumar Yadav (supra) was considered in the case of Anzar Ahmad v/s State of Bihar and others, AIR 1994 SC 141. In the said decision, the Apex Court stated thus in para 7 and 19:-

“7. As regards the allocation of marks for viva voice and academic performance for the impugned selection it has been pointed out before us by the learned counsel appearing for the Commission that in the counter affidavit filed on behalf of the Commission before the High Court it was categorically stated that in all cases where the recommendation is made only on the basis of interview conducted by the Commission and no written qualifying examination is conducted, it has always been the practice of the Commission to fix 50% marks for academic achievement/educational qualifications and 50% marks for interview/viva voice and only in cases where written examination is also conducted by the Commission for screening the candidates, 100 marks are reserved for performance of the candidates in such qualifying examination and 20 marks are reserved for interview/viva voice. It has been submitted that since in the instant case the recommendation was to be made only on the basis of interview and hence in accordance with the past practice which is being followed consistently and for a number of years, 50% marks were reserved for academic achievements/educational qualifications and 50% marks were reserved for interview/viva voice and selection and the recommendation was made by the Commission on that basis. ...”

“19. In the instant case, we find that the State Government in its letter dated September 20, 1990 has clearly stated that selection should be made on the basis of interview. On the basis of this letter the Commission could have made the selection wholly on the basis of marks obtained at the interview. But in accordance with the past practice, the Commission has made the selection on the basis of interview while keeping in view the academic performance and with that end in view the Commission has allocated 50% marks for academic performance and 50% marks for interview. It cannot be 1987 Supp SCC 401 : 1988 SCC (L&S) 183 : (1987) 5 ATC 257 : (1988) 1 SCR 794 11 (1988) 3 SCC 241 : 1988 SCC (L&S) 757 : (1988) 7 ATC 741 : 1988 Supp 1 SCR 379 12 (1992) 1 SCC 28: 1992 SCC (L&S) 38: (1992) 19 ATC 68 held that the said procedure adopted by the Commission suffers from the vice of arbitrariness. By giving equal weight to academic performance the Commission has rather reduced the possibility of arbitrariness.”

[11]. In the light of the above decisions of the Apex Court and the fact that the posts for which the selections were required to be made were of Laboratory Attendant, and further fact that large number of candidates i.e. 1952 were short listed after written examination, it cannot be said that calling candidates for interview about 63 times to the number of posts would be fatal to the selection process. The interviews were held for 19 days and large number of candidates i.e. 1952 could appear for interview and the selection committee had before it several candidates with option to find out better and suitable from amongst them. At any rate, the criteria about short-listing 3 to 5 times of the candidates cannot be said to be the rigid proposition as stated by the Apex Court notwithstanding the nature of

post to which selection is sought to be made. It is noteworthy that the case of Manjit Singh (supra) related to the Class-I Medical Officers wherein the Apex Court laid down the criteria about the ratio of 3 to 5 times for one post but then the Apex Court did not made it mandatory.

[12]. The next question is about the criteria on the basis of which the selection was to be made. We quote the criteria from the judgment of the learned Single Judge in para 13 which reads thus:-

“CRITERIA FOR THE SELECTION OF LAB. ATTENDANTS

i) **Academic qualifications:**

Matriculation

- | | | |
|-----------------------------|----------|----|
| a) 1 st Division | 05 marks | 05 |
| b) 2 nd Division | 03 marks | |
| c) 3 rd Division | 02 marks | |

Supporting Qualifications/Activities:

- | | |
|---|----|
| a) Rural Area | 05 |
| b) Knowledge of Sc Practical Equipments | 15 |

ii) **Experience:**

- | | | |
|---------|----------|----|
| 1 year | 01 marks | 05 |
| 2 years | 02 marks | |
| 3 years | 03 marks | |
| 4 years | 04 marks | |
| 5 years | 05 marks | |

iii) **Interview Marks: 20**

Grand Total: i + ii + iii = 50”

[13]. It has been stated that the marks for interview in effect were 50. In our opinion, the marks for interview have been specified as 20. The remaining marks i.e., 30 marks were for different criteria, i.e., academic qualifications, knowledge of science practical equipments and experience, so also 5 marks for rural area. We do not think that all these 50 marks could be termed as the marks for interview.

[14]. In the light of the decision quoted by us as above, the allotment of marks for interview could not be said to be on higher side.

[15]. The learned Single Judge found that 5 marks allotted for the

candidates belonging to rural area was clearly illegal. The decision cited by learned Counsel for the appellants in the case of Sudesh Rani (supra) was over-ruled by the Full Bench of this Court in the case of Abhishek Rishi as rightly found by the learned Single Judge. The decision of the Full Bench of this Court is in consonance with the earlier decisions of the Apex Court. We therefore, concur with the learned Single Judge who held that allotment of 5 marks for the candidates belonging to rural area was illegal.

[16]. It is not in dispute that the original petitioners did not plead and prove before the learned Single Judge about any mala fides on facts or bias of the selection committee in order to assail the selection process. Consequently, the learned Single Judge also did not record any finding about the mala fides. We therefore hold that there was no mala fide in the process of selections and the selection therefore could not be set aside on the ground of mala fides or bias.

[17]. Equitable considerations also dissuade us to approve the view taken by learned Single Judge in its entirety. The appellants are admittedly working from last 5-6 years. Some of them might have become now over-age also. The entire selection may then need not be disturbed at this stage.

[18]. The net result of the above discussion is that no fault could be found out with the selection process adopted by the selection committee except allotment of marks for rural area candidates. The appellants/selected candidates have been working since their appointments in 2011 and are still working. It is not at all clear from the record as to what number of marks were given to the selected candidates and who were from the rural area.

The same will have to be found out by respondent No.2 – Board and

thereafter by deducting those marks, the fresh selection list will have to be prepared and displayed. We, therefore, make the following order:-

ORDER

[i] The LPA Nos.856, 948, 1379, 1380 and 1381 of 2014 and LPA Nos.442, 443, 450, 453, 562, 563, 564 and 804 of 2015 are partly allowed;

[ii] the impugned judgment and order made by the learned Single Judge is set aside and modified and the respondent No.2 is directed to deduct the marks awarded to the selected candidates in the category of rural area and prepare a fresh select list and display the same;

[iii] the selected candidates, if aggrieved with the list so displayed, shall have four weeks to approach the competent court.

[Surya Kant]
Judge

[A.B. Chaudhari]
Judge

July 20, 2016.
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