

In the High Court of Punjab and Haryana at Chandigarh

C.W.P. No. 14846 of 2016 (O&M)

Reserved on: March 09, 2017

Date of Decision: March 22, 2017

Kuldeep Nara

... Petitioner

Versus

Haryana Public Service Commission and others

... Respondents

CORAM: HON'BLE MR. JUSTICE P.B. BAJANTHRI

Present: Mr. Sunil K. Nehra, Advocate,
for the petitioner.

Mr. H.N. Mehtani, Advocate,
for respondent No.1.

Mr. D.S. Nalwa, Additional Advocate General, Haryana
with Mr. Ravi Partap, A.A.G., Haryana.

Mr. Dinesh Arora, Advocate,
for respondent No.5.

Mr. Anurag Goyal, Advocate,
for respondent No.7.

P.B. Bajanthri, J.

In this writ petition, petitioner has questioned the validity of the result for the posts of Lecturer / Assistant Professor (College Cadre) in the subject of Physical Education and further sought for quashing the selection and appointment of respondents no. 3 to 8.

Brief dates and events of the selection process in the tabulated form are as under:-

10.08.2009	2 nd respondent – State sent a requisition to 1 st
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	respondent – Haryana Public Service Commission (hereinafter referred to as “HPSC”) to recruit Lecturers / Assistant Professors (College Cadre) (HES, Group B (College Cadre) Service.
28.10.2009	HPSC advertised for various posts of Lecturers / Assistant Professors amongst Physical Education subject. 22 posts were advertised for Physical Education subject among them 12 posts were earmarked for General Merit.
27.11.2009	Last date for submission of applications.
26.11.2009	Government after noticing certain discrepancies in the advertisement directed the HPSC to re-advertise while rectifying discrepancies.
21.12.2009	HPSC issued corrigendum while substituting essential qualification.
28.01.2010	Number of posts advertised were increased to the extent of 12 posts earmarked for General Merit to 15 posts etc..
23.02.2010	Last date for submission of applications.
25.07.2011	HPSC issued announcement relaxing with reference to Ph.D qualification.
25.07.2011	Once again HPSC issued corrigendum while giving relaxation of minimum marks for SC/ST candidates from 55% to 50%.

08.08.2011	Last date for submission of application forms (only for SC/STs).
12.09.2011	HPSC announced that candidates who are going to clear screening test, they would be called for interview 3 times of the number of advertised vacancies for each category of the posts will be called for interview and notified that they would be holding screening test on 28.09.2011 (vide Annexure P/8).
27/28.2.2012	Screening test result was announced, on the same day ratio of candidates for inviting them for interview was modified from 3 to 6 times of the number of advertised vacancies for each category of posts will be called for interview (Annexure P/9).
27.03.2012	Select list was notified.
30.03.2012	HPSC recommended the names of the selected candidates to 2 nd respondent – Government.

Particulars of selected candidates

Sr. No	Roll No.	Name of Candidates	Marks in Screening Test	Ranking in Screening Test	Marks in Final Result (Interview & Viva-voce)
1	155	Pankaj Gota	77	Not shown	78
2	87	Kapil Sharma	72	43	77

3	166	Rajesh Kumar (Respondent No.4)	65	82	76
4	209	Satish Kumar	80	7	76
5	167	Rajesh Kumar (Respondent No.3)	69	63	76
6	200	Sangeeta	73	40	75
7	234	Sukhbir Singh	72	47	74
8	84	Jyoti Solanki (Respondent No.5)	68	66	73
9	2	Ajay Kumar	75	21	72
10	210	Satish Kumar	74	34	72
11	226	Shashi Bala	80	8	72
12	259	Vijay Kumar	75	27	71
13	66	Hari Parkash (Respondent No.6)	69	61	70
14	40	Daisy Rani (Respondent No.7)	63	91	70
15	116	Meenakshi (Respondent No.8)	67	70	70
16	75	Jai Pal	77	17	66+2 = 68 (2 marks benefit given by High Court in CWP No. 15081 of 2012

Particulars of the petitioner

Sr. No	Roll No.	Name of Candidates	Marks in Screening Test	Ranking in Screening Test	Marks in Final Result (Interview & Viva-voce)
1	97	Kuldeep (Petitioner)	72	44	65

Learned counsel for the petitioner submitted that petitioner was unsuccessful candidate. He has questioned the

selection and appointment of respondents no. 3 to 8 on the score that HPSC have modified the method (criteria) of inviting candidates who have passed in screening test to interview to the extent 3 times to 6 times which was on the date of announcing the screening test result, namely, 28.02.2012. Such modification of selection criteria in the midstream of the selection process is contrary to Supreme Court's decision. Because HPSC adopted new criteria, therefore, respondents no.3 to 8 who have been called for interview with reference to 6 times and they are within the zone of consideration. Had HPSC adopted 3 times criteria for interview, respondents no. 3 to 8 would not have been within the zone of consideration for interview. Hence, their selection and appointment are illegal, arbitrary and contrary to Supreme Court's decision.

It was further contended by learned counsel for the petitioner that 7th respondent has been favoured by HPSC, 2nd respondent awarding 5 marks in excess to the qualification possessed by 7th respondent to the extent she has passed NET/SLET, thus, awarded of 5 marks is not deserved to be given in absence of qualification. Therefore, on this count also, 7th respondent's selection and appointment is liable to be set aside. Said contention has been admitted by HPSC in their reply statement. Consequently, they have taken a decision to reduce 7th respondent's marks from 70 to 65 marks and further it was contended by HPSC that both the petitioner and 7th respondent have secured 65 marks, since 7th respondent is older age than the petitioner. Hence, petitioner is not entitled for

selection. It was contended that such contention is not tenable for the reasons that if HPSC restricted inviting eligible candidates for interview by 3 times criteria, 7th respondent would not have been within the zone.

Learned counsel for the petitioner further submitted that HPSC - respondent have played a fraud during the process of selection like issuing corrigendum in altering the qualifications, criteria of inviting candidates from 3 times to 6 times and awarding 5 marks to 7th respondents, even though she did not have the qualification of NET/SLET. These illegalities would attract fraud in the process of selection. It was further submitted that in HPSC's written statement in para no.14, HPSC have admitted that Roll numbers of six candidates, namely, respondents no. 3 to 8 fell within the zone of 6 times of number of posts advertised in the aforesaid subject.

Petitioner's contention is that he is entitled for 68 marks instead of 65 marks, the same has not been considered by the HPSC.

Learned counsel for the petitioner cited the following decisions:-

1. **(2013) 4 SCC 540 – Tej Prakash Pathak and others vs. Rajasthan High Court and others (Para Nos. 2 and 6);**
2. **(2007) 9 SCC 497 – P. Mohanan Pillai vs. State of Kerala and others (Para Nos. 8, 9, 10, 14 and 15);**
3. **(2008) 3 SCC 512 – K. Manjusree vs. State of A.P. and another (Para Nos. 24 and 28);**

(The above decisions cited in support of the contention that change of selection criteria in the midstream is impermissible.)

4. (2010) 10 SCC 63 – Dr. M.S. Patil vs. Gulbarga University and others (Para No.12);

(In support of delay in questioning the selection and appointment of respondents no. 3 to 8)

5. (2016) 4 SCC 791 – State of U.P. and others vs. Ravindra Kumar Sharma and others (Para Nos. 7 to 9).

(In support of fraud contention).

Per contra, learned counsel for HPSC submitted that contention of the petitioner that announcement of 3 times to 6 times of number of posts advertised in the Physical Education subject is to give an opportunity to large number of merited candidates. It is a policy matter. Therefore, in the interest of candidates for the recruitment to the posts of Physical Education Lecturers/Assistant Professors, it was introduced by the selection authority. Therefore, the petitioner's contention that it was introduced after announcing of screening result and in order to help a section of candidates is incorrect. The other contentions of the petitioner that 7th respondent has been awarded 5 marks more even though she did not deserve as she was not having the qualification of NET/SLET. It was a bona fide mistake, the same has been admitted by HPSC and the same has been rectified by reducing 5 marks, even otherwise, 7th respondent is eligible having regard to the fact that petitioner and 7th respondent have secured equal marks of 65 marks, in that event older age criteria is required to be adopted and 7th respondent is older than the petitioner, therefore, petitioner's contention do not survive. HPSC has not committed any fraud as contended by the petitioner. No mala fide

has been urged insofar as change of criteria from 3 times to 6 times to the number of posts advertised after announcing the screening test result, so also awarding 5 marks to 7th respondent. Award of marks is error and the contention is an announcement of 3 times to 6 times in the candidates' interest. The petitioner is not eligible for the post as he do not possess one year of experience for the reasons that the petitioner had experienced during the period from 01.08.2008 to 31.03.2009 and from 4.08.2009 to till date. If the last date for submission of application is 27.11.2009, thus as on the last of submission of application, the petitioner did not have the one year of experience having regard to the aforesaid dates. Further, the petitioner has not presented the present petition within a reasonable period since the criteria from 3 times to 6 times was announced on 28.02.2012 and the select list was announced on 27.03.2012 and the writ petition was filed in the year 2016. Therefore on the ground of delay, present petition is liable to be rejected.

Counsel for respondent no.1 - HPSC relied on the following decisions:-

1. **AIR 1995 Supreme Court 77 – M.P. Public Service Commission vs. Navnit Kumar Potdar and another (Para No.13);**
2. **1999 (2) RSJ 22 – Chhattar Pal vs. State of Haryana and others (Para No.8);**
3. **CWP No. 23557 of 2012 – Tarun Rathee vs. State of Haryana and others, decided on 30.11.2012**

(These citations are in support of short listing power by the Selecting Authority short listing is permissible).

Learned counsel for 7th respondent submitted that change of criteria from 3 times to 6 times to call the candidates for interview the number of posts was announced on 28.02.2012 and the cause of action accrued to the petitioner in the year 2012 and the petition has been filed in the year 2016, therefore, on the ground of delay, present petition is liable to be rejected. Further the petitioner was waiting for the outcome of Jaipal's case. Thereafter, he had presented the petition. It was further contended that having regard to the prayer of the petitioner, the petitioner should have impleaded all the selected candidates. For not arraying all the selected candidates i.e. non joinder of the parties, present petition is liable to be rejected. On merits, 7th respondent possessed more qualification than the petitioner. Even assuming that 7th respondent's marks are reduced from 70 to 65 marks on account of mistakenly granting of 5 marks for passing NET/SLET since 7th respondent is older than the petitioner and 7th respondent's selection cannot be interfered. In support of the 7th respondent's contention, learned counsel for 7th respondent relied on the following decisions:-

- 1) **(2010) 12 SCC 576 – Manish Kumar Shahi vs. State of Bihar and others (Para Nos. 2, 3 and 16);**
(This decision in support of delay in filing petition)
- 2) **(2014) 16 SCC 187 – Ranjan Kumar and others vs. State of Bihar and others (Para No. 14)**
(This decision in support of the contention of estoppel that petitioner having participated in the process of selection and he is stopped in questioning selection and appointment).

Learned State counsel for respondent no.2 submitted that petitioner has approached this Court belatedly, therefore, he is

not entitled for relief sought in the present petition. It was further submitted that requisite qualification prescribed in the rules of recruitment is to be taken into consideration on the date of issuance of appointment order. Therefore, if there is any error rectified by the selecting authority, the same would be cured as on the date of appointment. Hence, the petitioner's contention that HPSC have introduced the new criteria when the process of selection is invoked, is not tenable.

In reply, learned counsel for the petitioner vehemently opposed the arguments of the learned State counsel having regard to the fact that in their affidavit dated 18.01.2017 in which they have stated that State – respondent is no way involved in the selection of the petitioner / respondents or the selection procedure adopted by respondent no.1 the selection procedure is internal procedure of the recruitment agency i.e. HPSC – respondent no.1. The state respondent can initiate the process of cancellation of appointment of respondent no.7 provided the recruiting agency i.e. HPSC cancels the candidature / recommendation of respondent no.7. Therefore, contention of the State is not tenable. While giving reply to the contentions of the respondents on the ground of delay in filing the present petition, learned counsel for the petitioner pointed out from notice of motion order dated 27.07.2016 which reads as under:-

“Inter alia points out to marks given in excess of admissions made in the application form. For instance, candidate who admits that she is not NET qualified has been assigned marks for NET. There

are other instances of the kind as well. The selection is of 2009 which make the petition rather belated. However, learned counsel submits that this information was not put in public domain and the petitioner had no knowledge, till such time as responses were received on request made under RTI Act, 2005. He argues that fraud vitiates everything and time remains still. He points out to a decision of this Court in CWP No. 15081 of 2012 decided on 18.11.2015 P.99 (Annex P-12) wherein a candidate who had been given marks less than he deserves approached this Court and has remained successful. He has been appointed to service.

Notice of motion.

Mr. H.N. Mehtani, learned counsel accepts notice on behalf of respondent no.1 and waives service on it. He prays for time to file reply.

Mr. Nehra to supply two sets of the paper book to Mr. Mehtani during the course of the day.

List on 01.09.2016.”

Hence, there is no delay as contended by the respondents.

Heard learned counsel for the parties.

In the aforesaid backdrop, the question that falls for consideration is as to whether 3 times of the number of posts to be called for interview changed to 6 times after the screening test was conducted, the HPSC along with screening test result ordered that 6 times of the number of posts to be called for interview. In view of the decision of the HPSC instead 45 candidates to be called for interview it rouse upto 90 candidates and in between 46-90 candidates the

respondent nos. 3 to 8 (Ranking in Screening Test is 63, 82, 66, 61, 91 and 70 respectively) have been considered, whereas petitioner's name with reference to ranking in screening test is 44 and respondent no.7 has been favoured by HPSC in awarding more marks. This triggered the present petition.

The post of Physical Education Lecturer / Assistant Professor is governed by the rules called Haryana Education (College Cadre) Group 'B' Service Rules, 1986. Said rules have been amended from time to time on 05.04.1994, 29.10.2002, 21.09.2006, 2009 (Draft Rules) and 11.03.2010. As on the date of advertisement i.e. 28.10.2009, the relevant rules of recruitment which is required to be adopted is Rules 2002 issued on 29.10.2002 and not the draft rules issued dated Nil in the year 2009 for the reasons that draft rules cannot be implemented when posts are filled by means of rules issued as on 29.10.2002. In other words, unless and until draft rules are finalized, the existing rules are required to be followed. Therefore, Haryana Education (College Cadre) Group B Service (Amendment) Rules 2002 prescribed for the posts of Physical Education Lecturers qualification is to be adopted as under:-

Sr. No.	Designation of Post	Academic Qualifications and experience, if any, for direct recruitment	Academic Qualifications and experience, if any, for appointment other than by direct recruitment
1.	Assistant Director of Higher Education.	(a) Good academic record with at least 55% of the marks or, an equivalent grade of B in the 7 point scale with letter	(a) Good academic record with at least 55% of the marks or, an equivalent grade of B in the 7 point scale with

2.	Lecturer in Humanities, Social Sciences, Sciences, Commerce, Education, Physical Education, Foreign Languages and Law	grades O,A,B,C,D,E and F at the Master's Degree level in the relevant subject from an Indian University, or an equivalent degree from a Foreign University. (b) Knowledge of Hindi upto Matric standard. (c) Besides fulfilling the above qualifications, candidates should have cleared the Eligibility test (National Eligibility Test) for lecturers conducted by the University Grants Commission, Council of Scientific and Industrial Research or similar test accredited by the University Grants Commission.	letter grades O,A,B,C,D,E and F at the Master's Degree level in the relevant subject from an Indian University, or an equivalent degree from a Foreign University. (b) Knowledge of Hindi upto Matric standard. (c) Besides fulfilling the above qualifications, candidates should have cleared the Eligibility test (National Eligibility Test) for lecturers conducted by the University Grants Commission, Council of Scientific and Industrial Research or similar test accredited by the University Grants Commission.
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Whether HPSC can change the selection criteria in midstream of selection process or not?

The selection process i.e. holding of a screening test date was fixed as 28.09.2011 vide notification dated 12.09.2011, whereas on 12.09.2011, 3 times of the number of advertised vacancies for each category of the posts will be called for interview, whereas screening test result was prepared on 27.02.2012. HPSC were aware that respondent nos. 3 to 8 could not be accommodated, they would

not come within the zone of consideration if 3 times criteria is adopted and screening test was announced on 28.02.2012 along with result, 3 times of the number of posts to be called for interview was changed to 6 times in the result sheet itself. Extracts of criteria reads as under:-

*“2. The question paper will be of objective type with multiple choice and the standard of the question paper for this test will be on the level of the essential educational qualifications prescribed for the respective post. The test will be of two hours duration. The question paper comprising of 100 questions will be of 100 marks. There will be no negative marking. In order of merit in this test, **candidates three times of the number of advertised vacancies for each category of the posts will be called for interview.**” (vide Annexure P/8)*

*“On the basis of Screening Test held on 28.09.2011 (Wednesday) for recruitment to the posts of Asstt. Professor/Lecturer (College Cadre) in the subject of Physical Education at Panchkula, the Haryana Public Service Commission, Panchkula has finalized the result. The candidates bearing the following roll numbers have been placed in the six-time-zone for calling them for interview for the above mentioned posts as per availability of candidates in each category. **All the bracketed candidates at the cut-off marks have been included in the six-time-zone.** The result given below is roll number wise and category wise.” (vide Annexure P/9).*

Thus, having regard to the dates and events of the selection process it is evident that HPSC have changed the criteria in the midstream of the selection process in order to favour only respondents no. 3 to 8. As is evident from the record the remaining 10 candidates with reference to screening test merit would fall within 3 times criteria and in merit list they would be with 45 candidates [Roll number of 1st candidate in Screening test result not shown, 43,7,40,21, 34, 8, 27, 17 and 44). These factual aspects crystal clear in order to favour respondents no.3 to 8 HPSC has changed the criteria along with screening test, which 5 marks of mala fide. Thus, HPSC has played fraud in the process of selection. Supreme Court in the case of ***Ravindra Kumar Sharma (supra)*** held as under:-

“7. In Bhaurao Dagdu Paralkar v. State of Maharashtra & Ors (2005) 7 SCC 605, it was observed : (SCC p.614, para 16)

“16. In Lazarus Estates Ltd.v. Beasley (1956) 1 All ER 341, Lord Denning observed at QB pp. 712 and 713: (All ER p. 345 C)

“..... No judgment of a court, no order of a minister, can be allowed to stand if it has been obtained by fraud. Fraud unravels everything.”

In the same judgment Lord Parker, L.J. observed that fraud vitiates all transactions known to the law of however high a degree of solemnity. (p. 722) These aspects were recently highlighted in State of A.P. v. T.Suryachandra Rao (2005) 6 SCC 149.”

8. In Ram Chandra Singh v. Savitri Devi (2003) 8 SCC 319 it was held thus: (SCC pp. 327-30, paras 15-18, 23, 25-26 & 29)

“15. x x x Fraud as is well known vitiates every solemn act. Fraud and justice never dwell together.

16. Fraud is a conduct either by letter or words, which induces the other person or authority to take a definite determinative stand as a response to the conduct of the former either by word or letter.

17. It is also well settled that misrepresentation itself amounts to fraud. Indeed, innocent misrepresentation may also give reason to claim relief against fraud.

18. A fraudulent misrepresentation is called deceit and consists in leading a man into damage by willfully or recklessly causing him to believe and act on falsehood. It is a fraud in law if a party makes representations which he knows to be false, and injury ensues therefrom although the motive from which the representations proceeded may not have been bad.

x x x x x

23. An act of fraud on court is always viewed seriously. A collusion or conspiracy with a view to deprive the rights of others in relation to a property would render the transaction void ab initio. Fraud and deception are synonymous.

x x x x x

25. Although in a given case a deception may not amount to fraud, fraud is anathema to all equitable principles and any affair tainted with fraud cannot be perpetuated or saved by the application of any equitable doctrine including res judicata.

26. In Shrisht Dhawan v. Shaw Bros. (1992) 1 SCC 534, it has been held that: (SCC p. 553, para 20)

“20. Fraud and collusion vitiate even the most solemn proceedings in any civilized system of jurisprudence. It is a concept descriptive of human conduct.”

x x x x x

29. In Chittaranjan Das v. Durgapore Project Ltd. (1995) 99 CWN 897, it has been held: (Cal LJ p. 402, paras 57-58)

“57. Suppression of a material document which affects the condition of service of the petitioner, would amount to fraud in such matters. Even the principles of natural justice are not required to be complied with in such a situation.

58. It is now well known that a fraud vitiates all solemn acts. Thus, even if the date of birth of the petitioner had been recorded in the service returns on the basis of the certificate produced by the petitioner, the same is not sacrosanct nor the respondent company would be bound thereby.”

9. This Court in Express Newspapers (P) Ltd.& Ors. v. Union of India & Ors. (1986) 1 SCC 133 at para 119 has held thus:

“119. Fraud on power voids the order if it is not exercised bona fide for the end design. There is a distinction between exercise of power in good faith and misuse in bad faith. The former arises when an authority misuses its power in breach of law, say, by taking into account bona fide, and with best of intentions, some extraneous matters or by ignoring relevant matters. That would render the impugned act or order ultra vires. It would be a case of fraud on powers. The misuse in bad faith arises when the power is exercised for an improper motive, say, to

satisfy a private or personal grudge or for wreaking vengeance of a Minister as in S. Partap Singh v. State of Punjab AIR 1964 SC 72. A power is exercised maliciously if its repository is motivated by personal animosity towards those who are directly affected by its exercise. Use of a power for an 'alien' purpose other than the one for which the power is conferred is mala fide use of that power. Same is the position when an order is made for a purpose other than that which finds place in the order. The ulterior or alien purpose clearly speaks of the misuse of the power and it was observed as early as in 1904 by Lord Lindley in General Assembly of Free Church of Scotland v. Overtoun (1904) AC 515 (AC p.695),

'..... that there is a condition implied in this as well as in other instruments which create powers, namely, that the powers shall be used bona fide for the purpose for which they are conferred'.

It was said by Warrington, C.J. in Short v. Poole Corpn. (1926) Ch 66, that:

'.... No public body can be regarded as having statutory authority to act in bad faith or from corrupt motives, and any action purporting to be of that body, but proved to be committed in bad faith or from corrupt motives, would certainly be held to be inoperative.'"

Supreme Court in the case of **State of Jammu and Kashmir and others vs. District Bar Association, Bandipora**, reported in **AIR 2017 S.C. 11**, in paragraph no. 12 with reference to Renu's case held as under:-

*“12. The decision in **Renu v. District and Sessions Judge, Tis Hazari Courts, Delhi** MANU/SC/0096/2014: (2014) 14 scc 50 dealt with appointments which were shown to be illegal and the outcome of arbitrariness. It was in that backdrop that the following observations came to be made :*

xxx xxx xxx

This Court considered the modalities adopted by the High Courts across the country in making recruitments and issued directions to ensure that appointments made by judicial institutions are in accordance the principle of equality of opportunity enshrined in Articles 14 and 16 of the Constitution. Emphasizing the principle of transparency in public appointment, this Court observed that :

*“Another important requirement of public appointment is that of transparency. Therefore, the advertisement must specify the number of posts available for selection and recruitment. The qualifications and other eligibility criteria for such posts should be explicitly provided and the schedule of recruitment process should be published with certainty and clarity. The advertisement should also specify the rules under which the selection is to be made and in absence of the rules, the procedure under which the selection is likely to be undertaken. **This is necessary to prevent arbitrariness and to avoid change of criteria of selection after the selection***

process is commenced, thereby unjustly benefiting someone at the cost of others.

Thus, the aforesaid decisions are an authority on prescribing the limitations while making appointment against public posts in terms of Articles 14 and 16 of the Constitution. What has been deprecated by this Court time and again is “back-door appointments or appointments dehors the rules”.

Analyzation of the contentions and counter-contentions of the parties, the following issues arise for consideration:-

- i) Non-joinder of parties;
- ii) Delay;
- iii) Estoppel;
- iv) Fraud;
- v) Change of selection criteria in the midstream of the selection; and
- vi) Award of 5 marks to the 7th respondent is arbitrary or not?

i) Non-joinder of Parties:

Non-joinder of parties i.e. non impleading of all the selecting candidates' results in dismissal of the writ petition or not. The petitioner has contended that respondents no. 3 to 8 are sufficient for the present case and so also issue involved. Since the petitioner has contended that change of criteria of selection i.e. from 3 times of the number of posts to be called for interview changed to 6 times after conducting screening test and respondent nos. 3 to 8 fall within the 6 times criteria (63, 82, 66,61, 91 and 70) therefore,

sufficient parties have been arrayed as respondents i.e., respondent nos. 3 to 8 fall under 6 times criteria. Thus, non-joinder of parties contention is not tenable. Having regard to the contention of the petitioner that due to change of criteria stated above, it is true that respondents no. 3 to 8 have been selected due to change of criteria. Therefore, contention of the respondents that petition is liable to be rejected on the ground of non-joinder of parties is hereby rejected.

ii) Delay

The respondents have contended that petitioner has approached this Court belatedly, therefore, on that score the present petition is liable to be rejected. In this regard, learned counsel for the petitioner pointed out that at the time of admission of the present matter, this Court was pleased to observe that information was not put in public domain and the petitioner had no knowledge and through RTI, he has obtained certain particulars of the private respondents and further it was alleged that there is fraud in the selection of the respondents. In other words, in order to bring respondents no. 3 to 8 within the zone of consideration for the purpose of inviting them for interview, criteria has been changed by the selection authority – respondent no.1. Therefore, on the ground of certain information was not put in public domain and on the ground of fraud, question of delay do not arise. If there is fraud in the process of selection by the selecting or appointing or candidates question of delay may not be hurdle. Moreover on the face of record it is evident that it is a clear case of fraud played by the HPSC in

the process of selection to the extent to favour only respondents no. 3 to 8 Selection criteria has been changed in the midstream of selection process that too on the date of announcing screening test result.

iii) Estoppel

The respondents have contended that the petitioner cannot challenge the selection criteria after having participated in the process of selection. No doubt, petitioner had participated in the process of selection, knowingly that criteria has been changed at the same time one cannot ignore the fact that in order to help respondents no.3 to 8 so as to fit them within the zone of consideration for interview, that apart certain particulars were not disclosed like awarding of marks to the 7th respondent for which she is not entitled. Therefore, there is no estoppel to the extent that having participated in the process of selection, the petitioner cannot challenge the selection criteria. Right to consideration of a candidate's appointment to a public post is a fundamental right, if there is a change in criteria in order to play fraud in the selection process. Therefore, having regard to the factual aspects of the present matter estoppel principle is not attracted.

iv) Fraud

Petitioner contended that 1st respondent – HPSC has played a fraud in the process of selection which is the subject matter in the present petition. It was alleged that large number of posts of Lecturers / Assistant Professors (various subjects) were notified,

whereas 1st respondent has modified the criteria only in respect of Lecturer / Assistant Professor Physical Education subject from 3 times to 6 times and it is not relating to short listing on the other hand it is a reverse principle. That apart it was argued that 7th respondent has been favoured by awarding 5 marks more on the ground that she possesses NET/SLET qualification. In the absence of possession of such qualification and it cannot be bona fide mistake for the reasons that 1st respondent has not awarded 5 marks for interview. It is awarded for acquisition of NET/SLET qualification. Thus, 1st respondent without examining the possession of NET/SLET qualification, 5 marks have been awarded to 7th respondent. Further, on 27.02.2012 screening test result was prepared and on 28.02.2012 modified selection criteria from 3 times to 6 times of the number of advertised vacancies for each category of posts for the purpose of inviting the candidates for interview. The power in this case has been abused by the selecting authority for unauthorized purpose. When power is used for unauthorized purpose, the same would attract principle of malice in law. It is to be noted that alteration of selection criteria is not for short listing but enlarging scope for others to participate in the interview process like respondents no. 3 to 8 within the zone of 6 times. These factual aspects are evident that 1st respondent – HPSC has played a fraud in the process of selection. Supreme Court in the case of ***Shrisht Dhawan (Smt) vs. M/s Shaw Brothers***, reported in ***(1992) 1 SCC 534***, in paragraph No.20 held as under:-

“20. 'If a statute has been passed for some one particular purpose, a court of law will not countenance any attempt which may be made to extend the operation of the Act to something else which is quite foreign to its object and beyond its scope Craies on Statute Law, 7th Edition, p. 79.' Present day concept of fraud on statute has veered round abuse of power or mala fide exercise of power. It may arise due to overstepping the limits of power or defeating the provision of statute by adopting subterfuge or the power may be exercised for extraneous or irrelevant considerations. The colour of fraud in public law or administrative law, as it is developing, is assuming different shade.....”

Supreme Court in the case of ***State of Bihar and another vs. P.P. Sharma, IAS and another***, reported in ***1992 Supp (1) SCC 222***, in paragraph Nos. 50 and 51, held as under:-

“50. *Mala fides means want of good faith, personal bias, grudge, oblique or improper motive or ulterior purpose. The administrative action must be said to be done in good faith, if it is in fact done honestly, whether it is done negligently or not. An act done honestly is deemed to have been done in good faith. An administrative authority must, therefore, act in a bona fide manner and should never act for an improper motive or ulterior purposes or contrary to the requirements of the statute, or the basis of the circumstances contemplated by law, or improperly exercised discretion to achieve some ulterior purpose. The determination of a plea of mala fide involves two questions, namely (i) whether there is a personal bias or an oblique motive; and (ii) whether*

the administrative action is contrary to the objects, requirements and conditions of a valid exercise of administrative power.

51. The action taken must, therefore, be proved to have been made mala fide for such considerations Mere assertion or a vague or bald statement is not sufficient. It must be demonstrated either by admitted or proved facts and circumstances obtainable in a given case. If it is established that the action has been taken mala fide for any such considerations or by fraud on power or colourable exercise of power, it cannot be allowed to stand.”

v) Change of selection criteria

On 27.02.2012 screening test result was prepared and it was announced on 28.02.2012. While announcing the result it was modified the number of candidates to be interviewed from 3 times to 6 times which is not relating to short listing, it is reverse principle. Therefore, in the midstream of selection process, 1st respondent – HPSC has violated the Supreme Court’s decision so also it is evident that in order to help certain candidates criteria has been changed. Thus, there is violation of Supreme Courts’ decisions like ***Tej Prakesh Pathak*** (*supra*), ***P. Mohanan Pillai*** (*supra*) and ***K. Manjusree*** (*supra*). In view of change of criteria arbitrarily, selection and appointment of respondents no.3 to 8 are liable to be set aside.

vi) Award of 5 marks to 7th respondent.

Respondent no.1 – HPSC has awarded 5 marks to the 7th respondent on the score that she possesses NET/SLET qualification. Award of 5 marks is with reference to possession of NET/SLET qualification. Without looking into NET/SLET qualification of 7th respondent, 1st respondent – HPSC has awarded marks, it cannot be a bona fide mistake for the reasons that 5 marks would be awarded with reference to document relating to passing of NET/SLET. Therefore, it is evident that in order to favour the 7th respondent for the purpose of selection and appointment, 1st respondent – HPSC has awarded the marks which is highly arbitrary, illegal and fraud. During pendency of this petition, no doubt, the marks awarded to the 7th respondent to the extent of 5 marks has been stated to have been reduced, even though the petitioner is not entitled for selection for the reasons that petitioner and 7th respondent have secured equal marks of 65. Admittedly, the 7th respondent is older in age than the petitioner, therefore, the petitioner's contention award of 5 marks more to the 7th respondent has been resolved. Petitioner's contention is that he is entitled for 68 marks instead of 65 marks. That apart when 7th respondent is not entitled for zone of consideration for the purpose of interview, on that score itself her selection and appointment is liable to be set aside. The same is required to be accepted for the reasons that having regard to the dates and events it is evident that 1st respondent – HPSC in order to accommodate respondents no. 3 to 8 changed the criteria of selection.

The respondents have contended that petitioner's application is required to be rejected for the selection to the post of Lecturer / Assistant Professor Physical Education subject on the score that the petitioner did not have the experience qualification of one year, having regard to the fact that he was working during the period from 01.08.2008 to 31.03.2009 and from 04.08.2009 to till date. As noted above, last date for consideration of application and qualification has been extended from 27.11.2009 to 23.02.2010 (for General candidates). The petitioner is a general candidate. If last date for submission of application is 23.02.2010 taken into consideration, the petitioner's application is very much within the last date of submission of application. It was also noticed that last date of submission of application form is extended for SC/ST candidates from 23.02.2010 to 08.08.2011 vide notice dated 25.07.2011. In view of these factual aspects, the contention of the respondents that petitioner do not possess the qualification of experience is liable to be rejected.

In view of above facts and circumstances, petitioner has been made out a prima facie case to interfere with the selection and appointment of respondents no.3 to 8 to the post of Lecturer / Assistant Professor (College Cadre) in the subject of Physical Education is hereby set aside. It was noticed that other selected and appointed candidates merit would fall under 3 times of number of advertised vacancies for each category of the posts for interview. Therefore, respondent no.1 – HPSC is hereby directed to re-do the

selection process insofar as petitioner is concerned from the date of announcement of screening test result to the extent of inviting 3 times of number of advertised vacancies for each category of the posts would be for interview. The above process shall be completed and if the petitioner is otherwise eligible, necessary selection and appointment order be issued to him within a period of three months from today. It is made clear that petitioner's appointment would be notionally from the date of others were appointed pursuant to advertisement dated 28.10.2009.

Public Service Commission is an institution of utmost importance created by the constitution and for efficient functioning of a democracy, it is imperative that Public Service Commission are manned by people of the highest skill and irreproachable integrity, so that selections to various posts can be immunized from all sorts of extraneous factors like political pressure or personal favouritism and are made solely on consideration of merit.

Having regard to the conduct of the 1st respondent – HPSC in the process of selection to the post of Lecturer/Assistant Professor (College Cadre) in the subject of Physical Education that they have played fraud in the selection process being a constitutional body. Hence, they are liable for exemplary cost of Rs. 25 lakhs. Cost shall be remitted in the account of Gandhi Vanita Ashram, Jalandhar. Cost shall be remitted within a period of 6 months and the same be reported in the Registry of this Court. Amount is to be utilized only for infrastructure under the supervisory of Member Secretary of

Legal Service Authority, District Court, Jalandhar. The State Government is hereby directed to hold a preliminary enquiry through a senior officer of the Principal Secretary level and if prima facie case is made out against officials of the HPSC including Secretary of HPSC at the relevant point of time, initiate disciplinary proceedings against the officials of the HPSC after giving ample opportunity to each of the officials who are all involved and proceed in accordance with law. Such action be completed within a period of 6 months from today.

Perusal of records it is evident that examination and selection results were notified only with roll numbers. Candidates who intend to challenge any result are facing difficulty and due to non-providing of names of those candidates who have cleared examination and who have been selected for any public post. Therefore, in order to meet transparency HPSC has to reveal names of those who have cleared in the examination and marks obtained by each one of them and further in publishing select list also names and marks secured by each one of them be notified in future in respect of future recruitments.

Instant writ petition stands allowed, petitioner is entitled to cost of Rs.25,000/-. First respondent – HPSC is liable to pay within three months from today.

March 22, 2017
vkd

[P.B. Bajanthri]
Judge

Whether speaking / reasoned : Yes

Whether reportable : Yes