

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

CWP No. 20884 of 2013
Date of decision: 06.12.2017

Poonam Kundu

....Petitioner(s)

Versus

State of Haryana and others

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA

Present: Mr. Ravinder Malik, Advocate,
for the petitioner.

Mr. Harish Rathee, Sr. DAG, Haryana.

Mr. Kuldeep Tiwari, Advocate,
for respondents no. 4 and 7.

Mr. Nagar Singh, Advocate,
for Mr. A.S. Virk, Advocate,
for respondent no. 6.

G.S.SANDHAWALIA, J.

The present judgment shall dispose of two writ petitions i.e. CWP Nos. 20884 and 20316 of 2013, as common questions of facts and law are involved in both the writ petitions. Facts are being taken from ***CWP No. 20884 of 2013, Poonam Kundu vs. State of Haryana and others.***

Challenge in the present writ petition is to the advertisement dated 05.07.2013 (Annexure P-3) whereby, the posts were advertised by the respondent no. 7-educational institution namely Chhaju Ram Memorial Jat College, Hisar by the Administrator of the respondent no. 4-society. Accordingly, the selection proceedings including the interview letters issued in pursuance of the recruitment process (Annexure P-5) are also subject matter of challenge by the petitioner, who is an applicant and aspirant

against the said post of Assistant Professor. The challenge has been raised on the ground that the process of election of the governing body of the Society had been set in motion vide orders passed in ***CWP No. 7908 of 2012, Ajmer Dhanda and others vs. State of Haryana and others*** on 11.07.2013 (Annexure P-2) and, therefore, the power to make the appointment by the Administrator was not justified.

It is the case of the petitioner that the election held on 18.07.2010 of the respondent-Society had been set aside vide order dated 20.04.2012 and respondent no. 5-Deputy Commissioner, Hisar had been appointed as Administrator vide order dated 16.11.2012 (Annexure P-1) under Section 68(1) of the Haryana Registration and Regulation of Societies Act, 2012 (in short 'the 2012 Act'). It is the case of the petitioners that an office bearer had approached this Court in *Ajmer Dhanda's case (supra)* whereby, directions were issued to hold the elections within 3 months on 11.07.2013. The Administrator, however, wanted to fill up the vacant posts to accommodate his relatives which is not permissible and the competent authority to appoint the teaching staff and non-teaching staff was the duly elected Management Committee of the Society. The advertisement has been issued on 05.07.2013 (Annexure P-3) and the posts were lying vacant for the last more than 8 years and the State had not granted sanction to fill up these posts. A legal adviser had also been appointed on 21.08.2013 (Annexure P-4) and, therefore, the date of interview i.e. 28.09.2013 (Annexure P-5) had been fixed and accordingly the writ petition was filed.

State, in its reply, took the plea that the Educational institution

i.e. Respondent no. 7 is a Government aided private college and receiving

grant-in-aid equal to 95% of the salary of its sanctioned staff and the governing body was to be constituted as per the provisions of the University Calendar and the term was of three years. Under the Haryana Private Colleges (Taking Over the Management) Act, 1978, an Administrator could be appointed in certain circumstances and under Section 3(3) of the said Act, the Administrator could exercise all the powers of the Managing Committee and President. The advertisement, thus, was for the vacant posts and the Administrator had the competence.

In the reply filed on behalf of respondents no. 4 and 7, the plea taken was that specific powers had been given to the Administrator and reliance is placed upon the provisions of the 2012 Act that the Administrator could exercise all powers of governing body and perform functions during the course of his appointment. The respondent-Society was a state aided society and, therefore, reliance was placed upon the provisions of Sections 67 and 68 of the 2012 Act to submit that the action taken is justified. It is further averred that way back on 31.01.2011 (Annexure R-4/1), the State Government had agreed to fill up 338 vacant posts of Assistant Professors and Librarians for all Government Aided Private Colleges upto 30.11.2007. In pursuance of it, the college had invited applications and the requirement of NET was to be compulsory. Candidates having done Ph.D Degree were to be exempted and directions had been issued that only those Ph.D degree holders who have done their Ph.D from Universities having 'A' grade from National Assessment and Accreditation Council were eligible. Resultantly, re-advertisement was issued on 09.01.2013 (Annexure R-4/3) and the last date had been extended upto 30.09.2013 (Anexure R-4/4). It is, therefore, pleaded that the

apprehension of the petitioner was without any justification.

In the written statement filed by respondents no. 1 and 3, the defence taken is that on account of complaints received on 18.07.2010 regarding the issue of membership of ineligible persons, a preliminary inquiry had been conducted. Resultantly, the elections had been annulled and the Administrator had been appointed vide order dated 16.11.2012 for a period of two years. Reliance was placed upon decision of the State Government dated 13.01.2011 to fill up the 338 vacant posts in Government aided private colleges. As per directions of this Court dated 11.07.2013 (Annexure P-2), effective steps for holding elections had been taken. The society had 21,000 members. Therefore, public notice had been issued to submit particulars and objections had been invited. Detailed report dated 13.01.2014 was submitted by the Deputy Commissioner to the Registrar of this Court (Annexure R-4) that the elections of the governing body would be completed by the end of March, 2014.

A perusal of Section 68(2) of the Act would go on to show that the argument which is raised by the petitioner is without substance. Section 68(2) would go on to show that the Administrator has powers also which include the functions of the governing body of the society. The same read thus:-

“(2) The Administrator shall, subject to the overall control of the Registrar General and such directions as may be received from him, have the powers to exercise all or any of the functions of the governing body of the society and take action as may be required for proper management of the society.”

The State has also rightly relied upon Section 3(3) of the 1978

Act, which reads thus:-

“(3) After taking over the management of a college under this section, the Administrator shall exercise all the powers of the managing committee and the president in respect of the college taken over.”

Keeping in view the above, it is apparent that the Administrator has proper authority as such to make necessary appointments. The ball had been set rolling by the State Government to fill up the vacancies before the election had been set aside in November, 2011. The process is to be duly scrutinized by associating the university nominees alongwith it. It would only be in the interest of justice that the teaching staff is appointed at the earliest so that the society can proceed ahead with its educational aims.

The petitioner, even otherwise, is only a mere applicant as such for the job and, thus, would have no *locus standi* as such to question the jurisdiction of the Administrator and the petition is apparently misconceived. The judgment of the Apex Court in ***Jt. Registrar of Co-operative Societies, Kerala vs. T.A. Kuttappan and others, 2000 (6) SCC 127*** relied upon does not pertain to the powers of appointment of the Administrator but only discusses the Kerala Cooperative Societies Act, 1969 wherein, the issue raised was whether Administrator could enroll new members as such. Thus, it was noticed by the Full Bench, which order was upheld by the Apex Court, that the role of the Administrator was only to even the keel of a ship which was in doldrums and, therefore, could not as such permit the expansion of the elected members. The said issue is not arising in the present case and, therefore, the judgment is not applicable to the facts and circumstances.

Resultantly finding no merit in the present writ petitions, the

same are dismissed.

06.12.2017
shivani

(G.S. SANDHAWALIA)
JUDGE

Whether reasoned/speaking

Yes/No

Whether reportable

Yes/No