

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH****Date of decision: 26.07.2018****CWP No.21892 of 2014 (O&M)**

Ravinder Kumar

...Petitioner

Vs.

State of Haryana & others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINAPresent: Mr. Pardeep Chhoker, Advocate, for
Mr. P.R.Yadav, Advocate, for the petitioner.

Mr. Harish Rathee, Sr. DAG, Haryana.

Mr. D.S.Rawat, Advocate, for respondent No.2.

Mr. R.K.Malik, Senior Advocate, with
Mr. Mandeep Singh, Advocate, for respondent No.3.**RAJIV NARAIN RAINA, J. (ORAL)**

When the matter came up for hearing on 15.11.2016, the following order was passed in the main case as well as in the civil miscellaneous application i.e. CM No.166 of 2016:

“C.M. No.166 of 2016 has been presented in this petition to include the husband of the 3rd respondent, the Registrar of Deenbandhu Chhotu Ram University of Science and Technology, Murthal; an IAS Officer presently posted at Secretary, Cooperation Department, Haryana in his capacity as Member of the Selection Committee which met on July 16, 2014 to recommend names for appointment to the post of Assistant Director (Administration); the Director General of the Haryana Institute of Public Administration, [An institute where selected candidate was to join]; the then Chief Secretary to Government of Haryana, who was also Member of the

Selection Committee and the Member of the Parliament from Rohtak Constituency all by name as proposed respondents to lend support to the allegations made in the petition in challenge to the selection, would in case allowed to be impleaded immediately give rise to seriously disputed questions of fact, which cannot be resolved in writ jurisdiction. In any case, introducing respondents No.5 to 10 by name at this stage when the pleading have come in, by way of the present application under Order 1 Rule 10 CPC shows that the petitioner wants to unnecessarily enlarge the scope of the proceedings beyond its original confines and in trying desperately to depend on non-evidence, extrinsic evidence etc. which is not available on the original writ file and which enlargement can be only managed by the civil court in a suit for which the petitioner is free to approach the civil court.

Opposing the application, Learned senior counsel for 3rd respondent in his address praying for dismissal of the application leaves hardly any manner of doubt in the mind of the Court that it would not be possible in summary writ jurisdiction to deal with seriously disputed questions of fact sought to be introduced after almost two years of the pending litigation which would inevitably arise in case the application is allowed which will be beyond judicially manageable standards of actions under Article 226. The only reason assigned in the application to base the claim is contained in para. 2 wherein it has been stated that *“on the last date of hearing the written statement on behalf of respondents No.2 & 3 was filed and objections were taken that persons against whom the allegations have been made are not arrayed as respondents. Therefore, the same are being arrayed as respondents as they could not be added respondents due to inadvertence. Moreover, they are necessary parties”*. The onus to prove the case rests on the petitioner. This is the initial burden. It has to be discharged in the pleadings presented on the first day when motion matters are heard by the High Court in preliminary hearing and thereafter by leave of the court. If the respondents now sought to be introduced are allowed to be arrayed as respondents by name, it would amount to giving the petitioner to play a second innings. Therefore, I would not accept the contention that the application deserves to be allowed on the plea that “initially

due to inadvertence respondents No.5 to 10 could not be impleaded”. As far as necessary parties are concerned, the law is clear. The necessary parties are such without whom a judgment cannot be passed. This is the first postulate in Order 1 Rule 10 of the Code of Civil Procedure even though the scope of necessary parties in a writ petition can be much wider than in civil suits. It is well settled proposition of law that allegations of mala fides, bias etc. are required to be pleaded with sufficient precision and prima facie proof by way of pleadings or by strong inference in the first instance presented on the first date of hearing and therefore, I do not think the respondents No.5 to 10 are necessary parties or the judgment cannot be rendered on the allegations made in the petition without their presence. I would, therefore, tend to think that this application is wholly misconceived, frivolous, vexatious and mischievous and thus does not deserve to be entertained and is therefore, dismissed. This Court has no power to allow parties to adduce evidence in writ proceedings or cross examine witnesses and therefore, the better course would have been for the petitioner to seek redressal before the Civil Court, if advised, and the law permitting where he would have an opportunity to examine and cross-examine respondents No.5 to 10 in the witness box in case arrayed and replies received on record.

However, on request of Mr. Yadav, the main case is adjourned to 14.3.2017.”

While dismissing the application, the main case was adjourned to 14.03.2017 on the request of Mr. P.R.Yadav, Advocate, and not for any other reason.

Today, Mr. P.R.Yadav, Advocate, has not turned up at the time of arguments. A request is made by his next friend, namely, Mr. Pardeep Chhoker, Advocate, for an adjournment. His request is rejected.

Since disputed questions of fact arise, the order dated 15.11.2016 is made the operating reason for dismissal of this petition.

Consequently, the instant petition is dismissed. The petitioner is free to approach the civil court, if advised, to settle disputed questions of fact.

26.07.2018
Vimal

[RAJIV NARAIN RAINA]
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes</i>
<i>Whether Reportable:</i>	<i>No</i>