

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

Date of Decision:-10.12.2018

CWP No.20409 of 2016(O&M)

Amarpal Singh & Ors.

.....Petitioners.

Versus

State of Punjab & Ors.

.....Respondents.

AND

CWP No.4843 of 2017(O&M)

Sunil Kumar & Ors.

.....Petitioners.

Versus

State of Punjab & Ors.

.....Respondents.

CORAM:- HON'BLE MR. JUSTICE JASWANT SINGH

Present:- Mr. Vijay Pal, Advocate for the Petitioners
(in **CWP No.20409 of 2016**) and
for respondent nos.4, 6 & 8 to 11 (in **CWP No.4843 of 2017**).

Ms. Alka Chatrath, Advocate for the Petitioners
(in **CWP No.4843 of 2017**) and
for respondent nos.5, 6, 8 to 12 (in **CWP No.20409 of 2016**).

Mr. Navdeep Chhabra, Deputy Advocate General, Punjab for
respondent no.1 (**in both cases**).

Mr. J.S. Puri, Advocate for respondent no.2 (**in both cases**).

JASWANT SINGH, J.

Ten petitioners in **CWP No.20409 of 2016**, who are working as

Lab Assistants in the respondent no.2-Punjab School Education Board, have

preferred the instant writ petition, praying for setting aside the order dated

5.9.2016 (P-4) passed by respondent no.2-Department, whereby their services have been terminated and further prayer has been made for quashing of order dated NIL (P-5), whereby fresh merit list has been prepared for the post of Lab Attendant and they are not reflected as successful candidates.

Six petitioners in **CWP No.4843 of 2017**, who are now included in the freshly drawn select list dated 05.09.2016 for the post of Lab Assistants, have filed in the instant writ petition, seeking direction from this Court to respondent no.2-Board for issuing them appointment letters to the post of Lab Attendants as per the said select list dated 05.09.2016.

In brief, admitted facts of the case are that, the Punjab School Education Board-respondent no.2 issued Advertisement dated 27.04.2011 for recruiting Laboratory Attendants to 31 vacant posts in various Senior Secondary Schools. 4752 candidates applied for the posts in question, which included the petitioners as well as private respondents. To short list the candidates, a written examination was held on 28.09.2011, in which 4594 candidates appeared. The written test was of 60 marks and the Board had called all candidates who had secured more than 33% marks in the said written examination for interview. Consequently, 1952 candidates were shortlisted and interviewed on different dates. The Board had made selection on the basis of criteria, whereby 05 marks were kept for academic qualifications; 05 marks for Rural Background; 15 marks were earmarked for knowledge of science, practical equipment; 05 marks were kept for experience i.e. 1 mark each for each year of experience subject to maximum of 05 marks; and 20 marks were earmarked for interview. By adopting the aforesaid criteria, the Board had selected and appointed 31 persons as Lab

Assistants, which included the present 10 petitioners.

The said select list of 31 candidates was challenged by some unsuccessful candidates, by filing a bunch of writ petitions. The said writ petitions were allowed by the learned Single Bench of this Court vide order dated 31.10.2012. Against the said judgment, selected/appointed candidates preferred an LPA bearing No.1864 of 2012 on the ground that they were not heard by learned Single Bench, while passing order dated 31.10.2012. The said LPA was allowed and the matters were remanded back to the Single Bench for fresh adjudication vide order dated 25.09.2013.

After remand, the matters were heard afresh by learned Single Bench and the learned Single Bench again allowed the writ petitions by passing a detailed common judgment/order dated 20.02.2014 in CWP No.8014 of 2012 titled as Sukhpreet Singh Vs. State of Punjab and held that Board should hold interviews afresh after short listing the candidates.

The aforesaid judgment/Order dated 20.02.2014 was again put to challenge by the Selected/appointed candidates vide LPA No.856 of 2014 and other connected appeals. The said LPA along with other appeals were decided by the Division Bench of this Court vide order dated 20.07.2016, whereby the judgment passed by learned Single Bench dated 20.02.2014 was modified and the respondent-Board was directed to prepare a fresh select list by deducting the marks awarded to the selected candidates in the category of rural area and display the same.

It is in compliance of the said order passed by Division Bench that respondent-Board prepared a fresh select list and displayed the same by deducting 05 marks awarded for the rural area. After deduction of the said marks awarded for rural area, petitioners-who were otherwise selected

earlier, have been excluded from the impugned select list (P-5) and consequently, vide impugned order dated 05.09.2016 (P-4), services of total 11 persons (which includes the petitioners) i.e. 1 General category candidate, 06 in SC Category, 03 in BC category and 01 in Ex-Servicemen category w.e.f. 04.10.2016, have been terminated. It is these orders Annexure P-4 and P-5, which have been impugned in the instant writ petition.

Learned Counsel for the petitioners in CWP No.20409 of 2016 has argued that while re-drawing the merit list Annexure P-5, the respondent-Board has mis-interpreted the Order dated 20.07.2016 passed by Hon'ble Division Bench, while disposing off the LPA No.856 of 2016 Annexure P-3 because the intent of the Division Bench was only to determine the merit between the litigating parties before the High Court and not extend a fresh lease of life to a select list which had got extinguished number of years back. In any case, it is argued that the selection list Annexure P-5 is bad in the eyes of law as no bifurcation of the marks assigned to the candidates by the Board has been mentioned. Thus, it is submitted that the said select list cannot be sustained and, therefore liable to be set aside. It is next argued that petitioners have been sincerely rendering services since 2012 and had no fault such as any misrepresentation, fraud in getting selected and, therefore, error, if any, is on the part of the selection agency and consequently, said error ought not to have been made basis for termination of services of petitioners. Thus, prayer has been made for accepting the instant writ petition.

On the other hand, learned Counsel for respondent no.2-Board has argued that the merit list Annexure P-5 has been re-casted in view of the

orders passed by Hon'ble Division Bench in its judgment dated 20.07.2016 (P-3) and after re-casting of the merit list, it was found that petitioners as well as one another person do not come within zone of selection and instead the persons mentioned in the select list are to be given appointment. Consequently, in compliance of the order passed by Division Bench, services of petitioners have been dispensed with vide order dated 05.09.2016 (P-4), in order to adjust the candidates who now come within zone of selection as per fresh merit list prepared by respondent-Board. It is further argued that the petitioners are not entitled for any relief from this Court, as the petitioners have not disclosed the factum of filing of SLP against the order dated 20.07.2016 passed by Division Bench in LPA NO.856 of 2016 and no stay has been granted by the Hon'ble Supreme Court.

Learned Counsel for the fresh selected candidates/Petitioners in CWP No.4843 of 2017, while adopting the arguments raised by respondent-Board have also asserted that although bifurcation of marks has not been given by the Board in the freshly drawn select list, however, *per se*, it cannot be termed to be bad in eyes of law, as the candidates were very well aware that their revised merit has been made by deducting of 05 marks awarded earlier for the rural area from their merit, which has now been attached by the Board as **Annexure R-2/1**. Thus, prayer has been made for dismissal of the writ petition no.20409 of 2016 and allowing of CWP No.4843 of 2017.

I have heard learned Counsel for the parties at length and have also perused the paper book with their able assistance. However, I am of the view that present petition deserves to be dismissed.

Admittedly, Petitioners who are working on the basis of a select list prepared by the respondent-Board after recruitment process was conducted by it for 31 posts of Lab Attendants were awarded 05 marks extra for rural area. The said awarding of 05 marks by the respondent Board has been held to be bad in the eyes of law by the Division Bench of this Court while deciding LPA No.856 of 2014 (P-3) along with other Bunch of writ petitions. The operative part of the order passed by Division Bench reads as under:-

“ 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.

”

Thus, it is seen from the order passed by Division Bench that it

had directed the respondent-Board to redraw the merit list for all the candidates again, by deducting 05 marks awarded to any candidate from rural area, and, therefore, did not confine itself to the litigation parties. Hence, the respondent-Board had rightly redrawn the merit list by deducting the extra 05 marks awarded to the 11 candidates (including the petitioners). Since, the Board has re-drawn the merit list in compliance of the order passed by Division Bench, it cannot be said that persons who were in waiting list have been selected. Rather, the waiting list, if any, which may have been drawn earlier by the respondent-Board, loses its significance in view of the re-casting of the merit list. Hence, the argument that a redundant list has been given a fresh lease of life, is also misconceived. Consequently, the first argument raised by counsel for the petitioners is completely mis-directed, being mis-interpretation of the order passed by Division Bench in LPA No.856 of 2014 (P-3).

As far as the second argument raised by counsel for Petitioners that no bifurcation of marks has been given in the impugned selection list is concerned, it is observed that although it might be right that the respondent-Board ought to have mentioned detailed marks of all the candidates while publishing the fresh merit list. However, mere non-mentioning of the detailed marks obtained by the candidates, does not, *ipso facto*, renders the said select list to be bad in eyes of law. As rightly argued by learned Counsel for private respondents, the petitioners were very well aware about the marks obtained by them and have been litigating in the Court for the past more than 6 years. They were also aware that they come within zone of selection only because they were awarded 05 marks for being from Rural background. It is only because of this reason that these selected

candidates/petitioners have preferred to file LPA before the Division Bench and also file SLP before the Hon'ble Supreme Court against the said order passed by Division Bench **Annexure P-3**.

In any case, this Court has gone into the original merit list as well as the freshly drawn merit list against, which has been placed on record by the respondent-Board as **Annexure R-2/1** for its satisfaction, which is as under:-

Original Merit list of Lab Attendants on the basis of Selection made by Selection Committee

Sr.No	Roll No.	Name/ Father's name	Category	Sub Total	Practical marks	Interview marks	Grand Total	Whether 5 marks of Rural Area given Yes/No
1	105041	Shaganpreet Singh/Harcharan Singh	Gen	10	11.67	13.67	35.34	Yes
2	102925	Balwinder Singh/S. Kaur Singh	Gen	8	11.67	14.00	33.67	Yes
3	102630	Vakil Singh/Harbans Singh	Gen	8	11.75	13.75	33.50	Yes
4	103254	Parminder Kaur/Harjinder Singh	Gen	8	11.50	14.00	33.50	Yes
5	102762	Ranjit Singh/Kulwant Singh	Gen	7	12.50	13.75	33.25	Yes
6	106316	Gaganpreet Singh/ Parminder Singh	Gen	6	12.00	14.00	32.00	No
7	102873	Ajaypal Singh/Harpal Singh	Gen	5	13.00	14.00	32.00	No
8	106229	Jasvir Kaur/Sukhdev Singh	Gen	6	12.50	13.50	32.00	No
9	106249	Manpreet Kaur Grewal/Nachhatar Singh	Gen	5	12.50	13.50	31.00	No
10	102867	Paramjit Singh/Balveer Singh	Gen	3	12.67	14.67	30.34	No
11	102655	Virpal Kaur/ Teja Singh	Gen	7	11.25	11.75	30.00	Yes
12	102644	Lakhwinder Singh/Daler Singh	Gen	3	13.25	13.75	30.00	No
13	103002	Sukhpal Singh /Narinder Singh	Gen	2	13.00	14.75	29.75	No
14	106512	Pardeep Kumar Jindal/ Dev Raj	Gen	2	12.75	14.75	29.50	No

Sr.No	Roll No.	Name/ Father's name	Category	Sub Total	Practical marks	Interview marks	Grand Total	Whether 5 marks of Rural Area given Yes/No
15	106783	Gurpreet Singh/ Darshan Singh	Gen	2	13.00	14.50	29.50	No
16	104015	Harpal Singh/ Mohinder Singh	SC	7	12.50	10.00	29.50	Yes
17	106861	Gurcharan Singh/ Ajaib Singh	SC	7	11.67	10.67	29.3400	Yes
18	106417	Ranjit Kaur/ Palla Singh	SC	5	11.67	12.67	29.34	No
19	106809	Amandeep Singh/ Gurdeep Singh	SC	8	10.33	11.00	29.33	Yes
20	102978	Rupinder Kaur/ Mukhtiar Singh	SC	8	11.00	10.33	29.33	Yes
21	104129	Didar Singh/ Dharampal Singh	SC	8	10.75	10.50	29.25	Yes
22	104765	Santosh Kumari/ Som Nath	SC	2	12.67	14.33	29.00	No
23	104866	Jasvir Kaur/ Paramshish Singh	SC	8	11.33	9.67	29.00	Yes
24	106670	Sanjeev Kumar/ Harmesh Kumar	BC	8	11.00	10.50	29.50	Yes
25	103095	Amarpal Singh/ Harbans Singh	BC	8	10.50	10.75	29.25	Yes
26	106669	Amit Kumar/ Dilbagh Rai	BC	7	10.75	11.25	29.00	Yes
27	102545	Jasvir Kaur/ Pyara Singh	Handicapped	8	10.75	10.50	29.25	Yes
28	104614	Vinod Kumar/ Ramesh Pal	Ex-Servicemen	8	7.50	9.00	24.50	Yes
29	104155	Yogesh Sharma/ Kailash Chander	Ex-Servicemen	3	9.25	11.00	23.25	No
30	101335	Harcharan Singh/ Dyal Singh	Ex-Servicemen	3	9.25	9.75	22.00	No
31	101176	Manpreet Kaur/ Bhagwan Singh	Sports	10	7.75	11.25	29.00	Yes

Fresh Merit list prepared in compliance with order of Punjab and Haryana High Court of the excluding five marks of Rural Area.

Sr.No	Roll No.	Name/ Father's name	Category	Sub Total	Practical marks	Interview marks	Grand Total
1	106316	Gaganpreet Singh/ Parminder Singh	Gen	6	12.00	14.00	32.00
2	102873	Ajaypal Singh/ Harpal Singh	Gen	5	13.00	14.00	32.00
3	106229	Jasvir Kaur/ Sukhdev Singh	Gen	6	12.50	13.50	32.00

Sr.No	Roll No.	Name/ Father's name	Category	Sub Total	Practical marks	Interview marks	Grand Total
4	106249	Manpreet Kaur Grewal/ Nachhatar Singh	Gen	5	12.50	13.50	31.00
5	102867	Paramjit Singh/ Balveer Singh	Gen	3	12.67	14.67	30.34
6	105041	Shaganpreet Singh/Harcharan Singh	Gen	5	11.67	13.67	30.34
7	102644	Lakhwinder Singh/ Daler Singh	Gen	3	13.25	13.75	30.00
8	103002	Sukhpal Singh /Narinder Singh	Gen	2	13.00	14.75	29.75
9	106512	Pardeep Kumar Jindal/ Dev Raj	Gen	2	12.75	14.75	29.50
10	106783	Gurpreet Singh/ Darshan Singh	Gen	2	13.00	14.50	29.50
11	102925	Balwinder Singh/ S. Kaur Singh	Gen	3	11.67	14.00	28.67
12	102630	Vakil Singh/ Harbans Singh	Gen	3	11.75	13.75	28.50
13	103254	Parminder Kaur/ Harjinder Singh	Gen	3	11.50	14.00	28.50
14	102762	Ranjit Singh/ Kulwant Singh	Gen	2	12.50	13.75	28.25
15	101670	Gurcharan Singh Sarla/ Pritpal Singh Date of Birth 04.08.1983	Gen	9	6.00	12.00	27.00
16	106417	Ranjit Kaur/ Palla Singh	SC	5	11.67	12.67	29.34
17	104765	Santosh Kumari/ Som Nath	SC	2	12.67	14.33	29.00
18	106413	Gurjeet Singh / Swaran Singh	SC	6	10.00	12.00	28.00
19	104939	Sunil Kumar Sangar/ Sadhu Ram Sangar	SC	7	10.00	10.67	27.67
20	106411	Jasbir Singh/ Jagar Singh	SC	7	8.00	12.00	27.00
21	106185	Sukhjeet Kaur/ Inder Singh	SC	7	9.00	10.75	26.75
22	104910	Sushil Kumar/ Hari Ram	SC	8	8.67	10.00	26.67
23	104221	Babaijit Singh/ Daljit Singh	SC	7	8.25	10.25	25.50
24	104197	Veerpal Singh/ Mohinder Singh	BC	8	7.75	11.75	27.50
25	106227	Subash Chander/ Ram Kewal	BC	8	9.50	9.75	27.25
26	102470	Jagminder Singh/ Rajinder Singh	BC	7	7.75	11.50	26.25
27	102545	Jasvir Kaur/ Pyara Singh	Handicapped	3	10.75	10.50	24.25

Sr.No	Roll No.	Name/ Father's name	Category	Sub Total	Practical marks	Interview marks	Grand Total
28	104155	Yogesh Sharma/ Kailash Chander	Ex-Servicemen	3	9.25	11.00	23.25
29	101335	Harcharan Singh/ Dyal Singh	Ex-Servicemen	3	9.25	9.75	22.00
30	104767	Pushpinder Singh/ Vikram Singh	Ex-Servicemen	5	7.00	9.67	21.67
31	101176	Manpreet Kaur/ Bhagwan Singh	Sports	5	7.75	11.25	24.00

Thus a comparative reading of the chart reproduced above, leaves no manner of doubt that the petitioners are rightly not reflected in the re-casted merit list and the freshly selected candidates have rightly been included in the select list Annexure P-5. Hence, it is held that merely because the detailed marks have not been mentioned in the impugned select list,same cannot be termed to be bad in the eyes of law. Consequently, second argument of petitioners is also rejected.

As far as the last argument raised by counsel for the petitioners that they have been in service since 2012 and there was no misrepresentation or fraud on their part and, therefore, their jobs are required to be protected, it is observed that the said argument is completely devoid of merit. When it has been held that the petitioners were wrongly awarded 05 marks for rural area, then it is clear that their selection itself was bad from very inception. Although they may not have mis-represented or committed fraud, but this fact itself cannot be a ground for retaining the petitioners in their jobs. It is settled position of law in service jurisprudence that equity and emotions do not play any part while coming to just decision, especially when the issue involved is of Public Service recruitment. In recruitment cases, service jurisprudence requires the Courts to decide the matters on merits and not protect the candidates, who were otherwise not eligible for

jobs, despite having found that their selection was bad right from inception, then it would lead to an un-enviable situation for the employer, whereby he would be forced to retain such employees who were not competent enough at first place to be selected on their merit in recruitment examination . This would defeat the entire purpose of having a recruitment examination and consequent selection on merits. Further, in case jobs of such candidates is protected, it would give a wrong signal to the society at large, that once they enter inservice, then come what may, their jobs would be protected by the Courts. This was never the intention of Constitution. Consequently, this Court has no hesitation to hold that the services of petitioners were rightly terminated vide impugned order dated 05.09.2016 Annexure P-4.

In view of the above, finding no merit, CWP No.20409 of 2016 is hereby dismissed whereas **CWP No.4843 of 2017** is allowed.

(JASWANT SINGH)
JUDGE

December 10th, 2018
Vinay

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