

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP No.2633 of 2014
Reserved on :07.12.2017
Date of decision:12.01.2018

Mukesh Kumar

....Petitioner

Versus

State of Haryana & others

...Respondents

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

Present: Mr.Sandeep Verma, Advocate
with Mr.Sunil Kumar, Advocate, for the petitioner.

Mr.Harish Rathee, Sr.DAG, Haryana.

Mr.S.S.Khurana, Advocate, for respondent No.5.

G.S. SANDHAWALIA, J.

Petitioner seeks writ in the nature of mandamus, under Article 226 of the Constitution of India, directing the respondents to appoint him on the post of Hindi Teacher, being in the top of the merit and to decide the legal notice dated 15.12.2013 (Annexure P-15).

It is the pleaded case of the petitioner that respondent No.5 is a recognized Government Aided School which is run by its managing committee and governed by the Haryana School Education Rules, 2003 amended upto 2007. The said respondent had advertised number of posts for the teachers as per the requirement which was decided in the resolution dated 12.07.2009 (Annexure P-1) and necessary permission was sought on 14.07.2009 (Annexure P-2) from respondent No.2 for filling up 2 vacant posts of Social Studies Master and one post of Hindi Teacher, which had fallen vacant in the school. Respondent No.2 granted the permission on 09.02.2010 (Annexure P-3) on various terms and conditions which also included that one member of the Selection Committee would be its

representative and the necessary request should reach the Directorate, through the concerned District Education Officer. Accordingly, the posts had been duly advertised on 16.02.2010 (Annexure P-4) and large number of candidates had applied and interviews were fixed for the post of teachers on 05.04.2010. Request dated 02.03.2010 (Annexure P-5) was sent to respondent No.2, to send its representative on the said dates, including 06.04.2010 when interview was fixed for the post of Social Studies Master also. Similar request was also forwarded by respondent No.3-District Education Officer, Rewari on 09.03.2010 (Annexure P-6). Accordingly, duly constituted Committee which included respondent No.3, fixed a criteria (Annexure P-7) for the selection of the Hindi Teachers, which was to be done on 05.04.2010.

It is the case of the petitioner that he duly participated in the selection process and the Committee had found him eligible out of the 74 applicants and recommended his name as he had got maximum marks, as per the merit-list (Annexure P-8). Respondent No.2 had written a letter on 31.05.2010 to respondent No.3, to complete the selection process. Similarly, letter was written on 13.08.2010, where reference was also made to CWP-10608-2010 titled *Geeta Batra Vs. State of Haryana & others*. On 13.08.2010 (Annexure P-11), respondent No.5-School had also written to respondent No.2 that respondent No.3 had not signed the merit-list and therefore, the case had not been sent to its office for consideration and on account of the non-signing of the case of all the applicants, the school sent the case directly to respondent No.2. Respondent No.2, thereafter, on 16.08.2010 (Annexure P-12) issued fresh

instructions to respondent No.3, to comply with the earlier directions for filling up the vacant posts, keeping in view the pendency of **Geeta Batra's** case (supra). It is the case of the petitioner that he visited to the office of the respondent No.3 and the school management number of times that he having got the maximum marks in the merit-list, was not being given appointment and resultantly, he had filed representation dated 20.01.2011 and 11.03.2012. It is, in such circumstances, he served a legal notice dated 15.12.2013 (Annexure P-15) and thereafter, the present writ petition came to be filed.

Respondents No.2 to 4, in their written statement, took the plea that respondent No.3, being a member of the Selection Committee, was not satisfied with the adopted criteria for awarding marks to the candidates by the members of the Managing Committee and therefore, he did not sign the Selection Committee's recommendations. It was admitted that he had been appointed on 01.04.2010 as the departmental nominee as per the Haryana School Education Rules, 2003. It is the case of the said respondents that it was, in such circumstances, he did not sign the final report of the Selection Committee and therefore, it was incomplete recommendation and could not be termed as valid and legal recommendation. Letter dated 26.04.2010 had been written showing his dissatisfaction and it is pertinent to mention that the said letter has not been placed on record and thus, an adverse inference is being drawn against the respondents. Reference was, accordingly, made to letter dated 05.05.2010 (Annexure R-2), written by respondent No.2 to respondent No.3, that the selection may be kept pending till the final

decision is taken, regarding the eligibility of Mrs. Rajni Kalra for the post of Social Studies Mistress and Mrs. Shashi Kanta, for the post of Hindi Teacher. Relevant record regarding their qualifications and experience etc. was asked for by the said respondent.

The school had refused to send the record on the ground that it was not practically possible to send all the documents of 249 candidates and that Shri Virender Singh, the District Education Officer and Narinder Kumar, S.O. Rewari were present as department nominees and had checked all the documents of the candidates and verified them to be correct. It was pleaded that on account of the complaint received through the Education Minister, it had been directed to conduct the election of the Managing Committee of the respondent No.5-School and according to the 2003 Rules.

Vide letter dated 24.05.2010, the school again requested for permission for completion of the selection process by mentioning that the interview of the above-mentioned candidates had taken place at the scheduled time. On 27.05.2010, respondent No.3 had requested the school again to submit all the relevant records, in compliance of the directions of the higher authorities. It is a matter of record that **Geeta Batra's** case (supra) wherein she sought directions to interview for the post of Social Studies Mistress being eligible for the interview in the school, was withdrawn on 14.07.2010 by filing an application by the concerned petitioner. The State had also written on 11.08.2010 to respondent No.2 to complete the selection process of the 3 teachers, keeping in view the earlier directions issued on 31.05.2010 and keeping

in view the orders passed by this Court. Similarly, vide letter dated 16.08.2010 (Annexure R-4), directions had been issued to complete the selection process, as noticed above, which was stated to be withdrawn on 19.08.2010(Annexure R-5), on account of a representation made by one Shri Murari Lal and other members/founders of the Managing Committee of the respondent-School.

It is, thus, apparent from the perusal of the said letter that it was on account of the fact that the process of selection had been started and election was to be held in August, 2010 and it was, in such circumstances, the said order dated 16.08.2010 was withdrawn. On account of the new Committee coming into force, communication dated 13.09.2010 (Annexure R-6) was, accordingly, received by respondent No.2 that the selection was not done as per the provisions and therefore, the interview conducted by the earlier Managing Committee be cancelled. On 20.09.2010 (Annexure R-7), respondent No.3 wrote to respondent No.2 that the posts should not be filed as the newly formed Executive Managing Committee had recommended to cancel the interview for the sanctioned posts. Resultantly, the stand of the State was that the interview had been conducted but the name of any of the candidate had not been finalized and therefore, the recommendations of the Selection Committee, without consent, were not valid and binding.

The stand of respondent No.5 is similar, that the selection was not finalized and therefore, no right of the petitioner had been infringed. The new Executive Committee had made a request for cancellation of the recommendations dated 13.09.2010, which had not

been received yet and resultantly, the writ petition was opposed.

Arguments have been raised by counsel for the petitioner that inspite of following the proper procedure, the appointment had been withheld at the behest of respondent No.3 and on account of the fact that since the election had taken place, thereafter, on 29.08.2010 and the Management had changed and therefore, they were keen that the appointment process is not completed.

The State Counsel and counsel for the private-respondent have argued, accordingly, argued that petitioner has no legal vested right, as such, to be considered for appointment as the final list had not been signed.

A perusal of the above facts and the communications would go on to show that prior approval was sought and duly granted by respondent No.2. The Government nominee was associated with the fixing of the criteria and he took part in the interview process. The merit-list of all the 74 candidates who appeared has been placed on record as Annexure P-8, which mentions that the petitioner was recommended for appointment, as he had got the maximum marks. Nothing has been brought on record to show, at any stage, that Virender Singh, the then District Education Officer had written, as such, to respondent No.2 that there was some wrong marking by the members of the Management Committee or some irrational numbers had been granted by the members of the Management Committee. As noticed, the communication would go on to show that the case of one Mrs. Rajni Kalra and Mrs. Shashi Kanta, was subject matter of consideration of respondent No.2, for the

posts of Social Studies and Hindi Teachers. Resultantly, all the record had been asked for and it had been replied that it was not possible to send documents of all the 249 candidates by the School and clarification had been made that both the candidates had appeared at the time of interview.

It is apparent that on account of some recommendations made, the election of the Management Committee of the School was directed, which took place on 29.08.2010. On account of the intervening factors and complaints received and the change of the Management, the petitioner became a victim of the said circumstances and recommendations, accordingly, were sought to be withdrawn by the new Management Committee on 13.09.2010. The selection process had, as noticed earlier, had been set in motion and had been appropriately acted upon and the Government nominee had been duly associated, at that point of time. In the absence of any material to show that the Government nominee had objected and had written to respondent No.2 that the petitioner had been wrongly awarded marks or that the criteria which had been fixed was not as per the parameters, the appointment of the petitioner cannot be held back.

The perusal of Annexure P-8 would go on to show that on the basis of criteria fixed, he had got 31.67 marks and in the interview 19 marks had been granted and accordingly, he secured 50.67 marks, as per the merit-list, which was over and above the other persons. The name of Shashi Kanta, which was also mentioned in the communications, also finds mention and her merit would go on to show that it was 44.64 only and she figured in the said merit-list and for whom the State apparently

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seem to have an interest in joining her, as her name finds mention in the communication. In such circumstances, the stand of the State or the Management Committee cannot be held to be justified in any manner. The petitioner duly applied and participated in the interview process. Merely because of the change in the circumstances, on account of the election of the Committee taking place and the Government representative holding back, for reasons best known to them, the appointment process could not be finalized, to the detriment of the petitioner. The said action is totally arbitrary and has caused prejudice to the petitioner and resultantly, the present writ petition is liable to be allowed.

Accordingly, directions are issued to respondent No.2 to give its concurrence regarding the recommendations sent by the then Management Committee of respondent No.5, regarding filling up of the post of Hindi Teacher by the petitioner. The said procedure be completed within a period of 2 months from the receipt of a certified copy of this order. On the said recommendation, appointment letter be issued to the petitioner, within a period of one month thereafter, by respondent No.5.

Writ petition stands allowed, in the above-said terms.

12.01.2018
Sailesh

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned: *Yes/No*

Whether Reportable: *Yes/No*