

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

LPA No.1701 of 2015 (O&M)

Date of decision: August 09, 2018

Vijay Kumar Syal

.....Appellant

Versus

State of Punjab and others

....Respondents

**CORAM: HON'BLE MR. JUSTICE A.B. CHAUDHARI
HON'BLE MR. JUSTICE KULDIP SINGH**

Present: Petitioner in person.

Mr. Rajesh Bhardwaj, Senior DAG Punjab.

Mr. J.K. Sibal, Senior Advocate with
Mr. Dhawal Bhandari, Advocate
for respondents No.6 and 7.

A.B. CHAUDHARI, J

The present intra-court appeal has been filed by the appellant-Vijay Kumar Syal assailing the impugned judgment dated 01.07.2015 passed in CWP No.4413 of 1995 and other connected petitions, by the learned Single Judge declining to grant any relief to the petitioner in the matter of non-selection of the appellant to the post in question.

The appellant-Vijay Kumar Syal had filed CWP No.7359 of 1995 in this Court, on 07.03.1995 putting challenge to the process of selection adopted by the Punjab Public Service Commission (for short 'Commission') in respect of vacancies that arose in 1991 for the post of PCS (Executive Branch). The ground of challenge raised by the petitioner before the learned Single Judge as well as before this Court, in fact, was that the constitution of selection committee was illegal and wrong, that the selections made by the Commission

in respect of the respondents to the writ petitions were liable to be set aside, even in respect of the allotment of marks to them and the criteria or method of grading adopted by the Commission. Though, the process of selection was conducted in the year 1994, the result was declared only in March, 1995 and thus, there were *mala-fides* in the selection process that was undertaken in the year 1995 and appointments were made accordingly. The appellant-Mr. Syal appeared before us, in person, and submitted that he is working as Sub Divisional Officer, with the Government of Punjab and would attain the age of superannuation by 31.07.2018 and that is the reason why we took up his appeal on his insistence for final hearing.

We have heard Mr. Syal in person for quite some time and learned counsel for the respondents. We have carefully perused the record. It is not in dispute that the appellant-Vijay Kumar Syal had participated in the process of selection before the selection committee constituted by the Commission. The selection had taken place in September 1994 and the result was declared in March, 1995. He failed in getting selected. It is true that the appellant filed his writ petition immediately thereafter, in the year 1995 itself to challenge the selection process. But then, writ petition remained pending in this Court till, it was decided on 01.07.2015 by the learned Single Judge of this Court. It is also an admitted position that the selected candidates whose selection was challenged by the appellant had already joined their respective posts, and therefore, their appointments continued for all these years. Despite the fact that the appellant had participated in the process of selection and he would not be entitled to challenge the selection process, we heard Mr. Syal for quite some time. We find that the ground regarding *mala-fides* alleged by him in the writ petition against the respondents fall in the realm of serious disputed question of

facts. It would not have been possible to draw any definite conclusion on such seriously disputed questions of facts in the extraordinary writ jurisdiction, by the learned Single Judge. Having recorded a detailed judgment, learned Single Judge, ultimately, in the order dated 01.07.2015 passed in CWP No.4413 of 1995, held as under:-

“76. In conclusion, having said all of the above, in view of what has been held with regard to the non-feasibility of quashing a selection process after 20 years, this Court has no option but to dismiss the petition, with a pious hope that further selection processes would be made in a more transparent manner. Practicably, though a direction would otherwise need to be issued, even in terms of what was observed by their Lordships of the Full Bench, that selection criteria must be framed immediately upon receipt of requisition by a selection body and no change in such criteria, which must be duly thought out, can be effected thereafter, till the selection process is wholly complete; however, the Commission itself framing the criteria not being in consonance with what has been held by the Supreme Court in Dr. Krushna Chandra Sahu's case (supra), the direction to be issued, has to be in consonance with what has been held in that case, i.e. that the selection criteria for higher posts, especially those of the Civil Services and higher level posts to be manned by technologists and professionals, should be framed by the Government itself and incorporated in the Rules governing such body. Therefore, to ensure that consistency is maintained in future selections, the respondent State is, consequently, directed to frame the criteria to be adopted by the Commission for selection to the service and to incorporate the same in the Punjab Civil Services (Executive Branch) (Class-I) Rules, 1976 within a period of three months from the date of receipt of a certified copy of this order. With the above, nothing more needs to be said, except that the directions contained herein above, be conveyed to both, the Government as also the Commission, by the Registry of this Court, forthwith.”

Upon perusal of the above conclusion drawn by the learned Single Judge, we find that no fault can be found out with the course adopted by the learned Single Judge, to interfere in the writ petition. After all it is well settled law that the jurisdiction under Article 226 of the Constitution of India, is a discretionary jurisdiction. It was difficult in the year 2015 to tinker with the selection and appointments made in March 1995. Therefore, in our opinion, the learned Single Judge was right in declining to grant any relief to the petitioner/appellant.

As stated by us earlier, the appellant is a Sub-Divisional Officer under the Government of Punjab and we hope that he would have a peaceful retired life. In the result, we do not find any reason to interference with the impugned judgment. Hence, we make the following order:-

ORDER

- (i) **LPA No.1701 of 2015** is dismissed.

(A.B. CHAUDHARI)
JUDGE

(KULDIP SINGH)
JUDGE

August 09, 2018
mahavir

Whether speaking/ reasoned: Yes/No

Whether Reportable: Yes/No