

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

LPA No. 870 of 2018 (O&M)

Date of Decision: 18.07.2018

State of Haryana and others

.....Appellants

versus

Mukesh Kumar and another

.....Respondents

**CORAM: HON'BLE MR.JUSTICE KRISHNA MURARI, CHIEF JUSTICE
HON'BLE MR. JUSTICE ARUN PALLI, JUDGE**

Present : Mr. Deepak Balyan, Additional Advocate General, Haryana,
for the applicant-appellants.

KRISHNA MURARI, C.J. (oral)

CM No. 2385-LPA of 2018

Heard. For the reasons mentioned in the application, delay of
52 days in filing the appeal is condoned. Application stands disposed of.

CM No. 2384-LPA of 2018

Heard. For the reasons mentioned in the application, delay of
18 days in refiling the appeal is condoned. Application stands disposed of.

LPA No. 870 of 2018 (O&M)

This intra-court appeal under clause X of the Letters Patent has
been filed challenging the judgment and order of the learned Single Judge
dated 12.01.2018 allowing the writ petition filed by the petitioner-
respondent herein.

2. The petitioner-respondent approached this Court by invoking
the powers conferred under Article 226 of the Constitution of India seeking
a mandamus to command the appellants-State of Haryana to appoint him on
the post of Hindi teacher being in the top of the merit. The said relief was

claimed in the background of the facts that respondent No.5, who is a recognized Government Aided School, governed by the Haryana School Education Rules, 2003, as amended from time to time, issued an advertisement and invited applications for the post of teachers. The advertisement was issued after seeking due permission from respondent No.2, as required under the rules and also with a request to send one representative to participate in the Selection Committee. Further case of the petitioner (respondent herein) is that he duly participated in the selection process and the Selection Committee found him eligible out of 74 applicants and recommended his name as he had got maximum marks as per the merit list. It appears that appellant No.3, who was the nominee of the Department in the selection process, did not sign the final report of the Selection Committee, as such the appointment could not be made.

3. The petitioner approached this Court by invoking the powers conferred under Article 226 of the Constitution of India seeking a mandamus to command the respondents to give appointment on the post of Hindi teacher having been placed on the top of the merit list. The case set up by the respondent-petitioner was that though appellant No.3-District Education Officer, Rewari duly participated in the selection process as one of the nominated member but for the reasons best known to him did not sign the final selection list prepared after completion of the interview. It was also pleaded that the school management requested a number of times for finalizing the select list and despite there being a direction from appellant No.2, the final selection list was not approved and signed by him without any rhyme or reason. Appellant Nos.2 to 4 herein filed a written statement pleading *inter-alia* that respondent No.3 being a member of the selection

committee was not satisfied with the criteria of awarding marks to the candidates by other members of the selection committee, as such, he did not approve and sign the recommendations. It was also pleaded that a letter dated 26.04.2010 was written expressing dissatisfaction over the criteria adopted for the selection process. Another letter dated 16.08.2010 was issued by the Director Secondary Education, Haryana, to appellant No.2 requiring him to complete the selection process of two sanctioned posts including that of Hindi teacher, which is subject matter of dispute. However, subsequently, vide letter dated 19.08.2010, the said directions were withdrawn. A reference has also been made in the written statement to another letter dated 20.09.2010 said to have been written by appellant No.3 to appellant No.2 that the post should not be filled as fresh elections have taken place and a newly elected Managing Committee has made a recommendation to cancel the interview for the selection post.

4. Learned Single Judge after analyzing the pleadings of the parties and arguments advanced on their behalf allowed the writ petition. Learned Single Judge after analyzing the complete record has returned a finding that prior approval to hold the selection process was obtained and appellant No.3 was appointed as nominee of the Government to participate in the selection process, who was also a part of the decision fixing the criteria to be adopted. The stand taken by the appellants before the learned Single Judge that dissent expressed by appellant No.3 in its capacity as nominee of the Government vide letter dated 26.04.2010 has been disbelieved on the ground that the appellants failed to place the said letter on record. Further finding returned by the learned Single Judge is that since the process for electing a new committee of the management was set into

motion and selections were scheduled to be held in August-2010, which led to the withdrawal of the letter dated 16.08.2010 directing to complete the selection process and thus it is tainted with some *malafides*.

5. Having gone through the judgment of the learned Single Judge and the record, we find no reason to take a view different from the one taken by the learned Single Judge. The record clearly establishes that before initiation of the selection process, due permission was sought and it is only thereafter the posts were advertised on 16.02.2010. A request dated 02.03.2010 was made to appellant No.2 to appoint a nominee as member of the Selection Committee. Before the interviews were held in April-2010, a duly constituted selection committee, which included appellant No.3, determined the criteria to be adopted for making the selection. There is no material on record to even remotely indicate that the criteria so fixed by the selection committee was not followed and the marks were not awarded in accordance with the said criteria. Even the letter through which it is alleged that dissatisfaction in this regard was expressed by appellant No.3 has not been brought on record. The fact that the direction to complete the selection process was withdrawn within three days and the elections of the committee of the management were held thereafter and the newly elected committee of management made a recommendation to cancel the interview speaks volumes.

6. We have not been able to find any justification for the government nominee on the selection committee for holding back his signatures on the select list. The said action of appellant No.3 is arbitrary and unjustifiable.

7. In view of the above facts and discussion, we see no reason to differ from the view taken by the learned Single Judge. The appeal is thus devoid of merits and accordingly stands dismissed.

(KRISHNA MURARI)
CHIEF JUSTICE

(ARUN PALLI)
JUDGE

18.07.2018
ravinder

Whether speaking/reasoned	√Yes/No
Whether reportable	√ Yes/No