

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

LPA-1454-2019 (O&M)
Decided on: 14.10.2019

Haryana Staff Selection Commission

... Appellant

Versus

Preety Poswal

... Respondent

CORAM: *HON'BLE MR. JUSTICE RAVI SHANKER JHA, CHIEF JUSTICE*
HON'BLE MR. JUSTICE RAJIV SHARMA, JUDGE

Present: Mr.Gagandeep Singh Wasu, Addl.A.G. Haryana.

Mr.Rakesh Sobti, Advocate
for the respondent.

RAVI SHANKER JHA, CHIEF JUSTICE (ORAL)

This appeal has been filed by the State being aggrieved by the order dated 30.05.2019 passed in CWP No.25511 of 2018 whereby the petition filed by the respondent/original petitioner has been allowed and the Haryana Staff Selection Commission has been directed to recommend the case of the petitioner for appointment on the post of PGT (Mathematics) under BC-B category which is lying vacant with all consequential benefits including notional fixation of pay.

2. Learned Additional Advocate General appearing for the State of Haryana submits that the respondent/original petitioner was in fact not qualified or short listed for being called for interview on account of the fact that the respondent/original petitioner had secured only 98 marks in the written examination conducted during the selection process which was less than the cut off marks of 104 in the BC-B category. It is submitted that the respondent/original petitioner was permitted to participate in the interview

only on account of the interim order passed by the learned Single Judge on 04.10.2018 in a writ petition filed by her. It is submitted that it was only because of the interim order that the petitioner was permitted to participate in the interview in which she was awarded 21 marks. It is submitted that the learned Single Judge while allowing the petition by treating the petitioner as an eligible candidate has lost sight of the fact that the petitioner was not eligible to be called for interview in view of the fact that she had secured less than cut off marks that was fixed for short listing candidates and therefore, her interview marks could not have been considered for determining her merit for appointment on the post of PGT.

3. Learned Additional Advocate General for the State submits that in such circumstances the impugned order passed by the learned Single Judge in CWP no.25511 of 2018 deserves to be set aside.

4. Learned counsel appearing for the respondent/original petitioner submits that once the petitioner was permitted to participate in the interview on the strength of the interim order passed by the learned Single Judge, the State cannot be permitted to raise such an objection in the absence of any challenge to the interim order dated 04.10.2018 passed in the writ petition permitting the petitioner to participate in the interview. It is submitted that in such circumstances as admittedly the respondent/original petitioner has obtained a total 119 marks which is more than the marks obtained by the last selected candidate in the PGT-BC-B category, therefore, no fault can be found in the impugned order of the learned Single Judge.

5. We have heard learned counsel for the parties. We have also perused and gone through the advertisement dated 28.06.2015 that was filed

along with the original writ petition as Annexure P-1.

6. A perusal of internal page 8 of advertisement under the head “Special Instruction”, clearly establishes that the Commission will short list the candidates for interview by holding a written examination. It is an undisputed fact in the present case that the Commission short listed the candidates on the basis of the written examination for the purpose of calling them for interview and the cut off marks fixed by the Commission was 104. It is also an undisputed/admitted fact that the respondent/original petitioner has obtained less than 104 marks, i.e. 98 marks in the written examination. In such circumstances, it is evident that the respondent/original petitioner was not eligible or entitled to be called for interview.

7. As stated earlier the petitioner was called for interview only on account of the interim order passed by the Court on 04.10.2018. It is also evident from the perusal of the impugned order that the learned Single Judge has not taken note of the aforesaid factual position regarding cut off marks in the written examination though such a plea was specifically raised by the respondent in paragraphs 8 and 9 of the written statement filed by them before this Court in the writ petition.

8. In view of the aforesaid, we are of the considered opinion that the petitioner could not have been permitted to participate in the interview nor could a direction have been issued by this Court for counting the marks obtained by the petitioner in the interview for the purposes of adjudging the merit of the petitioner as the petitioner had secured less than the cut off marks in the written examination and therefore, was not eligible to be called for interview.

9. The Single Bench having failed to take note of the aforesaid

factual aspect which was specifically raised before it by the appellant State through the written statement has erred in law in doing so. It is also observed that had the selection process gone ahead in the natural and normal course, all those candidates who had obtained or who have obtained less than 104 marks in the written examination would not have been ineligible for participation in the interview, however, on account of the directions issued by the learned Single Judge and the anomalous situation arising therefrom, a candidate who has obtained only 98 marks in the written examination has been permitted to participate in the interview thereby further compounding the illegality by ignoring the candidates who obtained marks between 98 and 104 and were above the respondent/original petitioner in the merit list prepared after the written examination. In the normal course the respondent/original petitioner would neither have been called for interview nor have been selected.

10. It is settled law that no right can be claimed by the petitioner on the strength of an interim order, which was passed without considering or finally deciding the core issue of eligibility of the petitioner to participate in the interview. It was purely an interim arrangement.

11. It is also a settled proposition of law that neither of the parties can be prejudiced on account of any interim order or act of the Court. In view of the aforesaid, mere fact of permitting the petitioner to participate in the interview on the strength of an interim order would not confer any right upon the respondent/original petitioner to claim benefit of appointment by counting total marks, i.e. marks obtained in the written examination and the interview obtained by the respondent/original petitioner specially as the fact that the respondent/original petitioner was not even eligible to be called for

interview on account of having obtained less than cut off marks is undisputed and was a material fact going to the root of the matter and was required to be considered by the learned Single Judge while finally deciding the petition.

12. This Court is bound to undo the wrong resulting from the interim order in view of the maxim *actus curiae neminem gravabit* and therefore, the submission made by the petitioner on the strength of her participation in the interview on the basis of the interim order passed by this Court, has no substance and is hereby rejected. In support of the aforesaid proposition of law, we can profitably refer to the decision of the Supreme Court rendered in the case of ***Kalabharati Advertising vs. Hemant Vimalnath Narichania and others, (2010) 9 Supreme Court Cases 437.***

The Supreme Court in paragraphs 15, 16 & 17 has held as under:-

*“15. No litigant can derive any benefit from the mere pendency of a case in a Court of Law, as the interim order always merges into the final order to be passed in the case and if the case is ultimately dismissed, the interim order stands nullified automatically. A party cannot be allowed to take any benefit of his own wrongs by getting an interim order and thereafter blame the Court. The fact that the case is found, ultimately, devoid of any merit, or the party withdrew the writ petition, shows that a frivolous writ petition had been filed. The maxim *actus curiae neminem gravabit*, which means that the act of the Court shall prejudice no one, becomes applicable in such a case. In such a situation the Court is under an obligation to undo the wrong done to a party by the act of the Court. Thus, any undeserved or unfair advantage gained by a party invoking the jurisdiction of the court must be neutralised, as the institution of litigation cannot be permitted to confer any advantage*

on a party by the delayed action of the Court. [Vide: A.R. Sircar (Dr.) v. State of U.P., 1993 Supp (2) SCC 734; Shiv Shankar v. U.P. SRTC, 1995 Supp. (2) SCC 726; Arya Nagar Inter College v. Sree Kumar Tiwary, AIR 1997 SC 3071; GTC Industries Ltd. v. Union of India, AIR 1998 SC 1566; and Jaipur Municipal Corporation v. C.L. Mishra, (2005) 8 SCC 423.]

16. *In Ram Krishna Verma v. State of U.P., (1992) 2 SCC 620, this Court examined the issue while placing reliance upon its earlier judgment in Grindlays Bank Ltd. v. ITO, AIR 1980 SC 656 and held that no person can suffer from the act of the Court and in case an interim order has been passed and the petitioner takes advantage thereof, and ultimately the petition stands dismissed, the interest of justice requires that any undeserved or unfair advantage gained by a party invoking the jurisdiction of the Court must be neutralized. A similar view has been reiterated by this Court in Mahadeo Savlaram Shelke v. Pune Municipal Corpn. (1995) 3 SCC 33.*

17. *In South Eastern Coalfields Ltd. v. State of M.P., (2003) 8 SCC 648, this Court examined this issue in detail and held that no one shall suffer by an act of the Court. The factor attracting the applicability of restitution is not the act of the Court being wrongful or a mistake or error committed by the court; the test is whether an act of the party persuading the Court to pass an order held at the end as not sustainable, has resulted in one party gaining an advantage it would not have otherwise earned, or the other party suffering an impoverishment which it would not have suffered but for the order of the Court and the act of such party. There is nothing wrong in the parties demanding to be placed in the same position in which they would have been had the Court not intervened by its interim order, when at the*

end of the proceedings, the Court pronounces its judicial verdict which does not match with and countenance its own interim verdict. The injury, if any, caused by the act of the Court shall be undone and the gain which the party would have earned unless it was interdicted by the order of the Court would be restored to or conferred on the party by suitably commanding the party liable to do so. Any opinion to the contrary would lead to unjust if not disastrous consequences.”

13. In such circumstances, we are of the considered opinion that impugned order passed by the learned Single Judge suffers from perversity and illegality and is therefore set aside.

14. The appeal filed by the appellant-State is accordingly allowed.

(RAVI SHANKER JHA)
CHIEF JUSTICE

(RAJIV SHARMA)
JUDGE

October 14, 2019.

Davinder Kumar

Whether speaking or reasoned: Yes/No

Whether reportable : Yes/No