

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

LPA No.579 of 2020 (O&M)

Date of Decision :04.11.2020

Sandeep Kumar Chaubey and others

.....Appellants

Versus

Sant Longowal Institute of Engineering & Technology Respondent

**CORAM: HON'BLE MR.JUSTICE RAVI SHANKER JHA, CHIEF JUSTICE
HON'BLE MR.JUSTICE ARUN PALLI, JUDGE**

Present : Mr. R.K.Malik, Sr. Advocate with
Mr. Samrat Malik, Advocate and
Mr. Sunil Hooda, Advocate for the appellants.

Mr. Chetan Mittal, Sr. Advocate with
Mr. Vivek Singla, Advocate for the respondent.

(The aforesaid presence is being recorded through video conferencing
since the proceedings are being conducted in virtual Court).

Arun Palli, J.:

This is an *intra Court* appeal, under Clause X of the Letters Patent, against a judgment and order dated 01.09.2020, rendered by the learned Single Judge, vide which the writ petition preferred by the appellants has since been dismissed.

The case set out by the appellants has been: vide notification No.2/2017 dated 11.06.2017, respondent-institute had advertised various posts of Professors, Associate Professors and, as we are concerned with, 23 posts of Assistant Professor in different streams. The appellants applied to compete against 9 posts of Assistant Professor (Mechanical Engineering), one of which was reserved for Scheduled Tribe, 3 for OBC category and rest 5 for the General category. However, vide another notification No.4/2019

dated 20.07.2019, these very posts were re-advertised but with the only change that number of posts (Assistant Professor, Mechanical Engineering) were reduced from 9 to 7. The last date for submission of on-line application was 30.08.2019. However, for, the appellants had applied in response to the advertisement dated 11.06.2017, and the process initiated pursuant thereto was not concluded they were sanguine that their earlier applications shall be considered. Particularly, for, there was no indication in the second advertisement that those who had applied earlier were also required to apply a fresh. On 09.10.2019, appellant No.3 (Navneet Goyal) approached the respondent-institute, but was informed that claim of only those candidates shall be considered who had submitted applications pursuant to the notification No.4/2019 dated 20.07.2019. Thus, vide this writ petition they have prayed for a mandamus to command the respondent-institution to consider their claims for selection and appointment to the posts of Assistant Professor (Mechanical Engineering).

Whereas, the respondent-institute, in its response, has clarified that pursuant to the advertisement dated 11.06.2017, institute had advertised 21 posts of Assistant Professor in various departments. However, these posts could not be filled for, the Ministry of Human Resource Development (for short 'MHRD'), New Delhi, vide letters dated 06.04.2016 and 05.05.2017, had instructed the institute not to initiate the recruitment process till joining of the regular Director of the respondent-institute. Who joined on 03.11.2017. Whereafter, the matter regarding appointments, in terms of the advertisement dated 11.06.2017, was placed before the Board of Management (for short 'the Board') in its 27th meeting held on 01.12.2017,

wherein the concerns expressed by the Director of the institute that he be permitted to review the advertisement, terms and conditions for faculty post and if necessary even re-advertise the posts were considered and appreciated. Accordingly, the competent authority cancelled the earlier notification No.02/2017. In the meanwhile, owing to the recommendations of the 7th Central Pay Commission the pay scales, educational qualification/experience for the teaching posts were revised by the MHRD, New Delhi. And, for, with the approval of the Board on 01.12.2017, the same were implemented in the institute, fresh advertisement was required to be issued with the revised pay scales, educational qualifications and experience. On 28.05.2018, even the Board instructed the respondent-institute to follow the guidelines issued by the All India Council for Technical Education, New Delhi (for short 'AICTE'), as regards recruitment and service conditions of the teachers of the institute. Resultantly, respondent-institute constituted an Advisory Committee on Faculty Recruitment (for short 'ACoFAR') on 29.06.2018 to frame norms/policy for direct recruitment of faculty. Accordingly, the recruitment rules were finalized on 21.05.2019 and were approved by the Board on 14.06.2019. Further, for, the Government of India vide notification dated 31.01.2019, implemented 10% reservation for Economically Weaker Sections (EWSs) even for the purpose of recruitment, vide letter bearing F.No.4-4/209TS.VII, the MHRD, New Delhi, required the respondent-institute to implement the same. Thus, the institute found it necessary to re-evaluate the requirement of faculty for each department which was worked out on the basis of the prevalent work load. Accordingly, posts of Assistant Professor in various

departments of the institute were advertised afresh, in terms of the revised rules and regulations. And, for concededly the appellants never applied in response to the notification No.04/2019 dated 20.07.2019, they had no right to participate in the selection process or seek any consideration. Thus, the petition was required to be dismissed.

Upon consideration of the matter in issue and the material on record, the learned Single Judge concluded that pursuant to the notification No.2/2017 dated 11.06.2017, 9 posts of Assistant Professor (Mechanical Engineering) were advertised whereas vide subsequent advertisement dated 20.07.2019 i.e. after a period of more than two years only 7 posts were sought to be filled. Further, in the meanwhile even the educational qualification/experience, pay scales etc. for the post of Assistant Professor had also undergone a change. Therefore, the appellants could not claim that in the absence of any note and information, that even those who had applied pursuant to the first recruitment notice were also required to apply afresh, they were misled. The appellants were well qualified and between the second notification No.4/2019 dated 20.07.2019, and the last date for submission of application form i.e. 30.08.2019, there was a period of 40 days within which they could always seek any clarification from the respondent-institute. But they chose not to. Therefore, the appellants were not entitled to any consideration and as indicated above, the writ petition filed by them was dismissed.

Mr. R.K.Malik, learned Senior counsel for the appellants merely reiterates the submissions that were advanced before the learned Single Judge and were duly dealt with: that concededly the appellants had applied

for selection, pursuant to the notification No.2/2017 dated 11.06.2017, and for, the selection process remained operative and the same posts were re-advertised vide subsequent notification No.4/2019 dated 20.07.2019, they had every right to participate in the selection and their candidature was required to be considered. Further, he submits that although the appellants cannot make any grievance against the posts having been re-advertised but in the absence of any intimation or a clarificatory note in the notification No.4/2019 dated 20.07.2019, that even those who had applied earlier were required to apply afresh they were misled and lost a right to compete, owing to a callous, unfair and unjust approach of the respondent-institute. It is urged that even on an earlier occasions when the post of Registrar was re-advertised by the respondent-institute it was duly notified that candidates who had applied pursuant to the initial advertisement were required to apply afresh. Thus, deviation from the settled norms and practice, he submits, would vitiate the process.

As to this, Mr.Chetan Mittal, learned Senior counsel in reference to the stand set out in the written statement filed on behalf of the institute would submit that a fresh process of recruitment was initiated vide notification No.4/2019 dated 20.07.2019, under the revised rules and regulations and for concededly the appellants never applied in response thereto, they had no right to be considered.

We have heard learned counsel for the parties and perused the records.

Ex facie, the claim of the appellants, for, the selection process initiated, pursuant to the notification No.2/2017 dated 11.06.2017,

was alive and operative and just because the same posts that were advertised earlier were re-advertised, vide notification No. 4/2019 dated 20.07.2019, there was hardly any occasion for the appellants, to have applied afresh, lacks conviction and cannot be countenanced. As indicated earlier, the respondent-institute crystallized in its response that 21 posts of Assistant Professor, in various streams, were advertised pursuant to the notification No.2/2017 dated 11.06.2017. However, these posts could not be filled. For, vide letters dated 06.04.2016 and 05.05.2017, the respondent-institute was instructed by the MHRD that till the regular director of the institute joins recruitment process be not initiated. Upon the request of the Director of the institute, who joined on 03.11.2017, that he be permitted to review the advertisement, terms and conditions for faculty posts and if necessary to even re-advertise the posts, the competent authority cancelled the notification No.2/2017 dated 11.06.2017. In the meanwhile, the pay scales, educational qualifications/experience for the teaching posts were revised by MHRD, vide letter dated 27.10.2017, and post approval of the Board on 01.12.2017, the same were implemented in the institute. Further, even the Board in its meeting held on 28.05.2018, instructed the respondent-institute to follow the guidelines issued by the All India Council for Technical Education, New Delhi, in respect to the recruitment and service conditions of the teachers of the institute. Accordingly, the institute constituted an **ACoFAR**, vide order dated 29.06.2018, to frame norms for direct recruitment of faculty. And, for, **ACoFAR**, finalized the recruitment rules on 21.05.2019, approved by the Board on 14.06.2019, the fresh advertisement to make appointments under the revised rules and regulations

was inevitable. Thus, a fresh recruitment process was initiated vide notification No.4/2019 dated 20.07.2019. And, as demonstrated in paragraph 2 of the response submitted by the respondents, the claim of the appellants that same posts that were advertised earlier were **re-advertised** vide notification No.4/2019 dated 20.07.2019, is apparently ill-founded.

Likewise, the argument, for, it was neither notified nor there was any indication/clarificatory note in the notification No.4/2019 dated 20.07.2019, that even those who had applied earlier in response to the first recruitment notification No.2/2017 dated 11.06.2017, shall have to re-apply, the appellants were misled and lost an invaluable right to compete not only lacks merit but is also self-defeating. For, significantly, there was not any indication/clarificatory note either in the notification No.4/2019 dated 20.07.2019, that those who had applied earlier, need not apply. Not just that the second notification dated 20.07.2019, was advertised after over 2 years of the first notification dated 11.06.2017. The appellants belong to a literate class and are highly educated, and therefore, the presumption that permeates the record is that they were watchful of their right/interest at every given stage of the process. Thus, it seems incredible that during these two years they never even once checked or tried to ascertain if the process initiated pursuant to the notification dated 11.06.2017, was even in vogue or scrapped/cancelled. As regards grievance of the appellants that even application fee of Rs.500/- deposited by each of them, while submitting their applications in response to the first notification, was not refunded, suffice it to say that nothing really turns on that either, and even if that was so, nothing precluded the appellants to seek refund, if admissible.

Further, as recorded even by the learned Single Judge fresh process was initiated vide notification No.4/2019 dated 20.07.2019, and the last date to submit the applications was 30.08.2019, therefore, given the confusion the appellants purport to be victim of they still had a period of 40 days to check/inquire/ascertain if they too were to apply in response to the notification dated 20.07.2019. Particularly, when appellant No.3 (Navneet Goyal), has been in employment of the respondent-institute for 11 years (on contractual basis) and was in service when the notification No.4/2019 dated 20.07.2019, was issued and published on the website of the institute. It does not end there, for of the 24 Assistant Professors, serving in the respondent-institute (on contractual basis) 16 had applied afresh in response to the notification No.4/2019 dated 20.07.2019. Similarly even appellant No.4 (Satnam Singh) was in service of respondent-institute as Assistant Professor approximately for a period of 4 years whereafter he resigned and joined as Lecturer in Technical Education and Industrial Training Department, Punjab.

In so far as the argument that on earlier occasions when the post of a Registrar was re-advertised it was notified to the candidates that who had applied earlier were required to apply afresh, and therefore, the respondent-institute deviated from the settled practice, does not advance the case of the appellants either. Firstly, it appears that no such argument was advanced before the learned Single Judge. Secondly, nothing is placed on record to show as to what necessitated or the circumstances in which the single post of Registrar was re-advertised. And, finally, as it appears, that was a situation where the selection process was alive and operative, but for certain reasons the same post was being **re-advertised** and thus, it was

deemed necessary to inform the candidates who had already applied that they too were required to apply afresh, but they were not obliged to deposit the application fee. However, that is not so in the matter at hands. For, post issuance of first notification No.2/2017 dated 11.06.2017, owing to certain decisive developments, which had a bearing upon the selection and the appointments to be made, the process initiated pursuant to the notification dated 11.06.2017, was scrapped/cancelled. And after over 2 years, a fresh recruitment process was initiated under the revised rules and regulations. Thus, all those who had applied earlier ought to have applied afresh.

Therefore, in the given circumstances, the only and the inevitable conclusion that could be reached: for, the appellants never applied in response to the notification No.4/2019 dated 20.07.2019, they could not claim a right to participate and compete in the selection process. Thus, we are dissuaded to interfere with the impugned order and judgment rendered by the learned Single Judge.

Accordingly, the appeal being bereft of merit is dismissed.

(RAVI SHANKER JHA)
CHIEF JUSTICE

(ARUN PALLI)
JUDGE

04.11.2020
Manoj Bhutani

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